



R. White sculpsit

JOHANNES SELDENUS. Armig.



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TRACTS

Written by

JOHN SELDEN

OF THE
INNER-TEMPLE, Esquire.

The First Entituled,

JANI ANGLORVM FACIES ALTERA,
rendred into *English*, with large Notes thereupon, by
REDMAN WESTCOT, Gent.

The Second,

ENGLAND's EPINOMIS.

The Third,

Of the Original of **ECCLESIASTICAL**
Jurisdictions of Testaments.

The Fourth,

Of the Disposition or Administration of Intestates
Goods.

The Three last never before Extant.

A

L O N D O N ,

Printed, for Thomas Basset and Richard Chiswell, and are to be sold
by Robert Clavell, at the Peacock in S. Paul's Church-Yard.

M D C L X X X I I I .

100 A 80

THE
Reverse or Back-face
OF THE
English J A N U S.
T O W I T,
All that is met with in STORY
Concerning the
COMMON
AND
STATUTE-LAW
O F
English Britanny,

From the first MEMOIRS of the two
NATIONS, to the Decease of King HENRY II. set down
and tacked together succinctly by way of Narrative.
Designed, Devoted and Dedicated to the most Illustrious the
EARL of SALISBURY.

Written in Latin by JOHN SELDEN of Salvinton, Student of the
Inner-Temple in LONDON; and Rendred into English by
REDMAN WESTCOT, Gent.



London, Printed for Thomas Bassett, and Richard Chiswell. MDC LXXXII.

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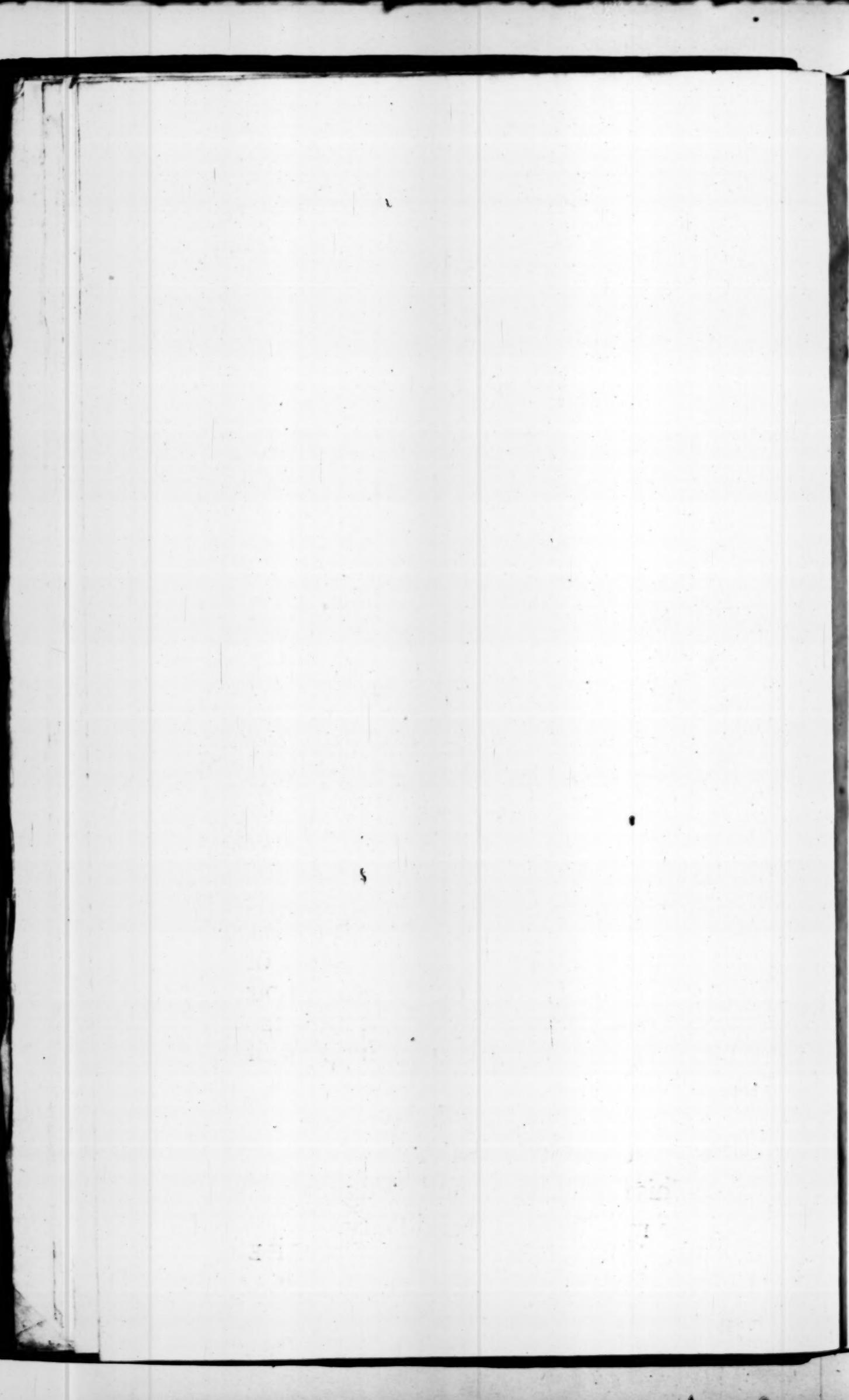


To the Right Honourable and truly
Noble Lord, *Robert Earl of Salisbury, Viscount*

*Cranborn, Baron Cecil of Effenden, Knight of the Illustrious
Order of the Garter, Lord High Treasurer of England,
Master of the Court of Wards, and Privy
Counsellor to His Most Excellent Majesty,
J A M E S, King of Great Britain, France
and Ireland, Heartily according to his
high deserte, I devote and dedicate,*

AND as it were with consecrated
Flowr, and crackling grain of
Salt, I offer up in Sacrifice. I
am not in condition to do it with
a costly Victim, or a full Censer. *G R E A T
SIR*, deign with favour to receive these
scraps of Collection; relating intirely, what
they are, and as far as the present Age may
be supposed to be concerned in ancient Sto-
ries and Customes, to the *Englisb-Britisb* State
and Government; and so far forth to *Your*
most Honoured Name. Which Name of
Yours, whilst I, one of the lowermost
Bench, do with dazzled eye-sight look up-
on (most Noble Lord, and great Support of
your Country)

I devoutly lay down
Upon its ALTAR
This small Earnest and Pledge
of my Obedience and Duty.





THE
TRANSLATOR'S
P R E F A C E
T O T H E
R E A D E R.

Reader,

THOU canst not be such a Stranger to thy own Countrey, as to need my commendation of the Learned, Worthy and Famous *AUTHOR* of these following Sheets; or that I should tell thee, what a Scholar, a Philologer, a Humanist, a Linguist, a Lawyer, a Critick, an Antiquary, and (which proves him an absolute Master of all these and many other Knowledges) what a Writer, the Great *SELDEN* was. Since it is liberally acknowledged by every body, that knows any thing (not only at home, but abroad also among Foreigners) that Europe seldom hath brought forth *His Fellow* for exquisite Endowments of Nature, Attainments of Study, and Accomplishments of Ingenuity, Sagacity and Industry. And indeed, to save me the labour of saying any more concerning this *Non-pareil* in all kinds of Learning, His own *WORKS*, which are now under

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under a Review, and will e're long be made Publick in several Volumes, will sufficiently speak his Character, and be a more prevailing Argument to indear Him to thy good Opinion and firm Acquaintance, than mine or any other Words can.

My busines now is only to give thee some Account of the Author's design in this little *Treatise*, and of those measures I took in Translating Him, that is, in restoring him to his own Native Language; though his great *Genius* had made the *Latin* and several other *Tongues*, as natural and familiar to Himself, as the *English* was.

To speak first of the *Author*, I do take this Piece to have been one of his first Essays, if not the very first; wherein he launched into the World, and did not so much try the Judgement, as deservedly gain the Approbation of the Learned: which was certainly one Reason, why, though the whole matter of the Book be of an *English* Complexion and Concern, yet he thought fit to put it forth in a *Latin* dress. That this was his first *Specimen*, or at least one of the first, I gather from the time of his Writing it, viz. in the Six and Twentieth year of his Age; when I suppose he was not of any very long standing in the *Temple*; I mean, in all likelihood, whilst he was on this side the Bar. For having fraught himself with all kind of Learning, which the *University* could afford him (which could be, we must imagine, no small time neither; as I may be allowed to guess from that passage of his in this Book, where he so affectionately recognizeth his Duty and Gratitude to his dear Mother *OXFORD*; who, if she had no other *Antiquity* to boast of, is and ever will be Famous for This Her Scholar, our great *Antiquary*; who hath also such a Monument to be seen in her publick *Library*, as will make her Glory and his Memory ever to flourish) I say, having after some competent time taken leave of *Academical Institutions*, and being now engaged into the Study of *Law*, he thought he could not do his Profession a better service, than by looking back into former times, and making a faithful Collection of what might be Pertinent and Useful, to bring down, along through all Changes and Vicissitudes of State, the Light and Strength, the Evidence and Reputation of old Institutes and Precedents to our present Establishments under our Gracious and Happy Monarchy. May It, as it is in its Constitution to the *English* people *Gracious*; so be ever in its Success to It self, and consequently

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sequently to us all, *Happy!* Here then thou wilt find the Rights of Government through all Ages, so far as our Histories will help us ; Here thou wilt see, from the first, our KING settled in his just Power, even in his Ecclesiastical Jurisdiction against the Papal Usurpation ; one shrewd Instance whereof is, the forbidding Appeals to the Pope, at such a time when the Popish Religion was at its Zenith in this Island ; that is, when People in all probability were most Ignorant. Here thou wilt easily be brought to acknowledge the Antiquity and Usefulness of Parliaments (though under other Names till after the Conquest) when all the Barons, that is, as that Title did at first import, all Lords of Mannors, all Men of Estate assembled together for the determination of publick Affairs : which Usage, because it produced too numerous and cumbersome a confluence, was afterwards for better convenience retrenched into a popular Election by the Kings Writ to chuse some of the Chiefest to act for all the rest. And sure enough, if we in Duty keep up the Royal Prerogative, and our Kings, as ever they have done, and ever, I hope, will, in Grace and Clemency oblige the Peoples Consent in their Representatives ; we shall alwayes have such Laws, such a Government, such a Correspondence betwixt Prince and Subjects, as must (according to the Rules of Humane Prudence, adding our Piety to it) make this Kingdom of Great Britanny (maugre the malice of the Devil and his Agents whatever, Jesuits or Fanatics) a flourishing and impregnable Kingdom.

Having said this in General of the Author's design, I shall not descend to Particulars, which I leave to thy self, Reader, to find out, in the perusal, that may be of good Use and great Consequence to the Publick ; but fearing, thou maist think I am so much taken up with the Author, that I have forgot My self, I have two or three words to speak of that sorry subject, before I leave thee.

As to the Translator; I confess, it is no great credit for any one to appear in that Figure ; a Remark, which I have learn't from one, who hath translated another excellent Piece of this Noble Author, (Noble I call him, sith Nobility is rais'd by Parts and Merits, no less than continued by Birth and Descent) it was his Mare Clausum, wherein he, I spoke of, hath acquitted himself very well, abating for his Villanous Dedication to the RUMP-Parliament, which was then setting up for a Republick ; in which Dedication of his, he hath vilely and like himself (I speak

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speak in Charity, as to his Interest, I mean, not his Judgement or Conscience at least, if there were any) aspers'd the Royal Family with Weakness and Collusion, to have lower'd the British Renown.

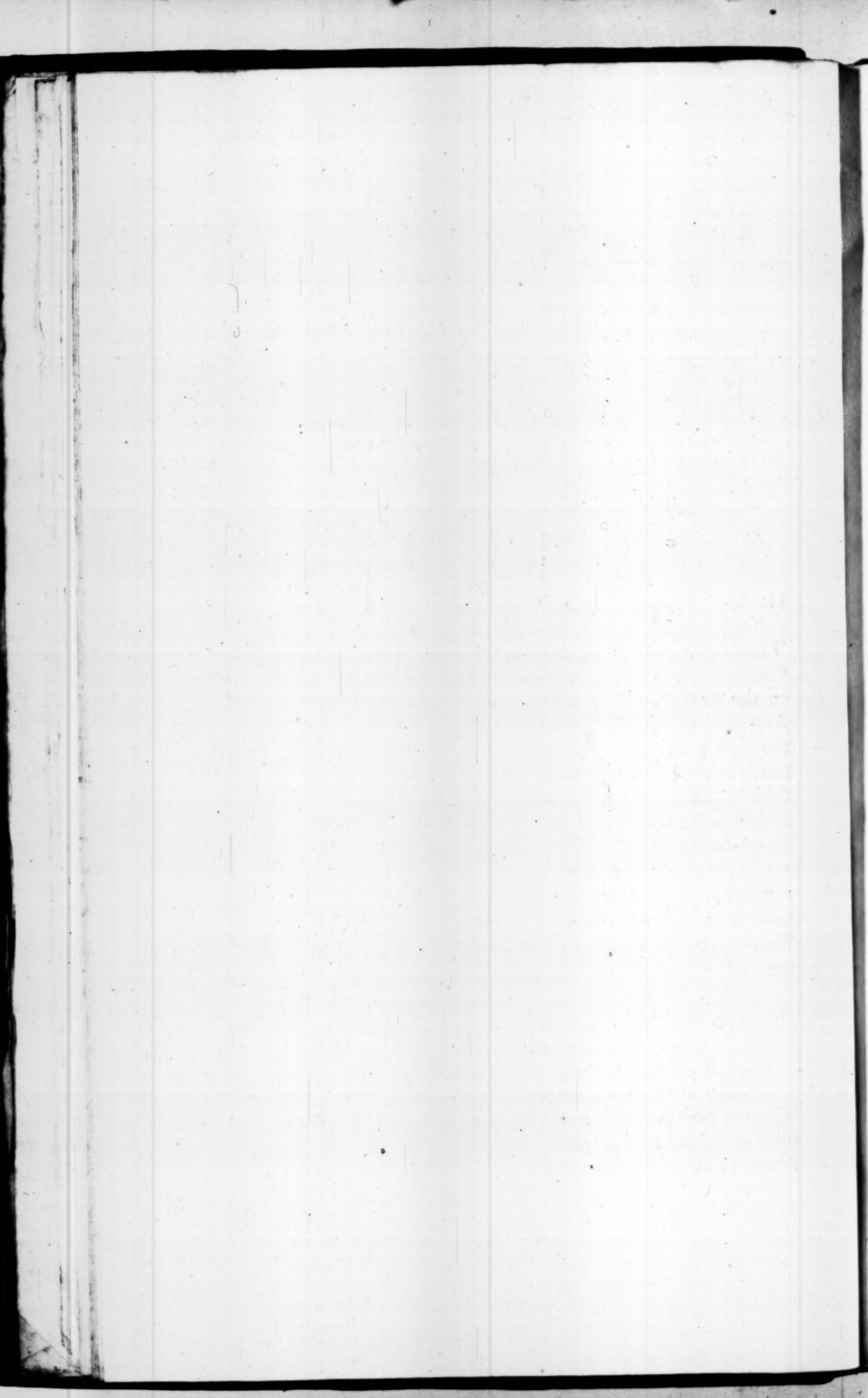
I am bid by Him, who puts this into thy hands, to tell thee, that when he was embark'd into this Employ; whatever it was, upon the coasting of it over, he was surprized to find, he had undertaken such a difficult and hazardous Voyage, and did presently conclude, That none but a Selden (that is, a Person of omnifarious Reading) was fit to be a Selden's Interpreter. For no other person, but one so qualified, can be Master of his Sense, Master of his Expression. His ordinary Style, where he delivers himself plainest, is as to the Matter of it, so full of Historical and Poetical Allusions, and as to the Method (and hath that of Crabbed in it besides) so Intricate and Perplex, that he seems, even where he pretends to Teach and Instruct, to have intended only to Amuse and Confound the Reader. In very deed, it is such a Style, as became a Learned *Antiquary*, which is to be *Antique* and Ora-cular; that one would think, the very Paper, he wrote upon, was made of the *Sibyll's* old-worn Sheets, and that his meaning could not be fift out without the assistance of a *Delian Diver*. However the *Translator* (though so much Inferior to the Undertaking, as to be almost Unacquainted with some considerable parts of it) did presume (whether rightly or no, must be left to thy judgement) that he was not utterly unfurnished with those Skills and Helps, which might make the Work Intelligible and Acceptable even to Plebeians. For though it was at first designed by the Excellent Author in his *Latin* for such as were meerly Lawyers and Scholars (they must be both, that mean to understand it as he wrote it) yet now it being done into *English*, it was to be calculated to the Meridian of common Capacities and vulgar Understandings. Which end he hath, he hopes, in some good measure answered; and in order to which end, he hath, to supply the defects of his *Translation*, at the end of the Book subjoyned some *Annotations*, which may serve partly to clear the Author's meaning, and partly to vindicate himself in the Interpretation. He did think once to have affixt those *Annotations* to the places they belong to; but upon second and better thoughts, he consider'd, that the Authors *Quotations* would be enow of themselves to charge the Margin with, and a further superœ-tation

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tation would but cloy and surbate the Reader ; though in the body of the Work, there are up and down many Explanations inserted, to excuse him from the trouble of having recourse to those Notes, which are added out of pure necessity, and not from any vanity of Ostentation, since the whole, if it had its due, might seem to require a perpetual *Comment*. In the main, which is enough for a *Translator*, be his *Author* what he will, he doth assure thee, that the meanest Subject of *England* may now read one of her greatest Champions and Writers (for Learned Pens sometimes do as good and as great service as Valiant Swords do) so understandingly, that he may edifie and learn, what duty and deference he ought to have for the Best of Governments.

And now, *Reader*, excuse me in a Digression, and do not impute it as a Levity to me, that I follow my Grave Author. It is my Duty so to do ; it is my Happiness, if I can : He doth not despair, now he appears in *English*, to have *Female Readers* too, to court him so far at least as to peruse his Translation, who hath so highly courted them with Noble Caresses in that Chapter, wherein he hath so learnedly pleaded the Excellencies and Rights of that *Angelical Sex*, (if Angels have any Sex) to the abashment and overthrow of the *Salick Law*. To what purpose did the *Author* write so much in their Commendation, if they were not to know it ? which, if the poor *Translator* hath any Obligations upon the Sex, he hopes they will own this as an Addition : not to mention that other Chapter of his, where, like a Gentleman and a Lawyer both, he maintains that freedom peculiar to our *English Ladies*, and which with Lawyers leave, I may call *The Courtesie of England*, in receiving of Salutes, against the censure of Rudeness on the one hand, and the suspicion of Wantonnes on the other. Though I must confess also, that some of his Citations in that defence, are so free, that I thought fit rather to leave them as I found them, than by putting them into *English*, to expose the Modesty of the Sex.

I have no more to say, *Reader*, but to beg thy Excuse, for any thing, wherein I may appear to have come short of the Weighty and Abstruse Senses of our Great and Worthy Author, and that I may detain thee no longer from his Conversation, to bid thee *Farewell*.





THE
AUTHOR'S
PREFACE
TO THE
READER.

AND that the Tutelar or Guardian of my threshold may not entertain thee with unlucky or ill-boding terms, he doth freely bespeak thee Health and Greeting, whoever thou art, Dear Reader. Moreover, he is in the humour to declare both the Occasion of drawing the first Furrow of this Enterprize, and also the Model and Frame of the whole Work, what it is, finished and compleated. It is a long while ago, considering how young a man I am, since from the first I have made it my hearty wish, that the ancient Original and Procedure of our Civil Law might more fairly and clearly be made out; as far, I mean, as the thing will bear, and as what store we have of publick Records affords assistance.

"Ἄλλοις γένεται ταῦτα,

For several men with several things are pleas'd;

as said Archilochus of old; and I do own for my self, what Seneca Senec. con-
trov. the Declaimer saith, that I take pleasure in going back to Studies of Antiquity, and in looking behind me to our Grand-sires better times. Which, to say truth, they who do too much, slight,

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Lucret. I. 1.

Ardua dum metuunt, amittunt vera viai.

that is,

**whilst lofty passes they do fear, through sloth
They lose the certain tracks and paths of truth.**

And, so may the Muses alway favour me, they are such things as are

Enn. Annal.
I. 7.

— Anteiqua, sepolta, vetusta,
Quai faciunt mores veteresque novosque tenentem
Moltarum veterum Legum, Divomque Hominumque
Prudentem.—

as faith another old Latin Poet ; that is, such stories as are

**Antique, buried in rubbish, old and musty,
which make one verst in customs old and new,
And of Laws, Gods and Men giving a view,
Render the careful Student skill'd and trusty.**

Some spare hours have been spent by me in reading over Historians, Chronologers, Antiquaries, Foreigners and our own Country-men, those of Ancient date and the more polite of the Modern sort : those especially who seem'd to make out the quickest course to that Goal and design I spoke of. I have carefully cull'd out whatsoever I met with, that lookt like the Orders and Decisions of Prætors or Lord Chief Justices, and whatsoever concerns the Civil or Prophane Law. (Prophane I call that, which is not held by the Religion of the Church ; as Sextus Pompeius hath taught me.) I did judge that there were a great many things in those Writers worth the knowing, and which might deserve to be digested into a kind of Volume according to order of Chronology, I did in the first place advise, and took that special order with my self, that as to this undertaking, I might with the greater ease have my Attendants ready at hand to wait upon my Studies. I went about to give some closure and cement, such as it is, (i. e. some method and connexion) to the scattered and disjointed bulk, and I brought it to a conclusion ; and as soon as it came into my mind to publish it, I endeavoured according to that meanness, which it appears in, to finish it (that I may make use of a Mathematick term) with its Complement. I have set the model and frame upon a sure account (not upon mine

own

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own credit neither, who am too apt to take on trust things suspected)
and in a compendious way : I have writ my self compendiously and
succinctly ; I have transcribed out of others faithfully. I do on set
purpose vouch the credit , I go upon, to be none of mine, but the Authors,
I have taken out of, that I may not be accused of false dealing by unskil-
ful or careless Readers. I have applyed my self not only to the mean-
ing of the Writers, or to their historical account, but even to the very
words and syllables, which they spoke, and have inserted them printed
in a different character ; those, I confess, unless it be from them of the
middle age, many times sufficiently barbarous, that miserably want po-
lishing, such as Criticks cannot away with, and do very well agree with
the Records and Reports of Law, which we converse with. However
I would not have thee disdain in the mean time brimful and wholesome
draughts of liquor, because the Bowl was not made in a Potters shop of
Colias a place in Athens, or in cold Winter to flit a garment which is
not made of Attick Wooll ; as Plutarch hath admonished the bearers of
Philosophy. Let young Ladies speak finically with their golden Flower-
amours, and let them, who have store and leave at once, court the graces of
words and beauties of expression. 'Tis true, the care of exact speak-
ing, is a thing befits the Muses, yet how the most abstruse Mysteries
even of the highest Urania, of Divinity it self, are laid open without
it, the Thomists, the Scotists, and what other Sects and Parties of
School-men there are, know well enough. And there are some others
also, that think they know ; I mean the inquirers into Heavenly Calcu-
lations (Astrologers) and the Weather-wise-men (Almanack-
makers) who in good deed for the most part rely too much upon the
trifling stories of their Masters. Now they, and not without good
reason, have preferred the Arab Writers barbarously translated, and
slovenly Bonatus before Julius Firmicus and modern Pontanus, as
spruce as they are. These two may rather be termed Grammarians,
than Astrologers. Nor do Aristotle's crabbed Lectures of natural Phi-
losophy discourage Interpreters or procure to themselves any discredit, by
reason of the affected obscurity of speech, they are delivered in : and
as to neatness of Poetry, Apollo himself hath been out-done by Sappho,
Homer, Hesiod. Though the Matter doth often surpass the Work-
manship ; yet who is there so rigid or so fond a Censurer, as to dispa-
rage and debase the Matter upon the account of the Workmanship ?
Which I would not have be said only of those passages, which I have
brought into this Piece out of those fore-mentioned Authors, but also of
the whole Body of our Common-Law. I have, I hope, not unluckily be-
gun with the very first Inhabitants of this Isle, as far as we can come to
the knowledge of them. Those Authors, whom I have followed in the

Plutar. de au-
diendo.

Plutar. lib.
orac. Pyth.

original

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original of Story, I have, as it was meet, set down and remark'd, adding the Judgement and Censure of the Learned. Afterward, besides Cæsar and Tacitus there are but few that afford us any help, and that but in few things too. For the name of Brittany was known but of late to the Greeks, but of late to the Romans; and the Britans were truly for a long while divided from all the world besides. But among Foreigners the latter Ages have enquired after them. I speak of Strabo, Pliny, Ptolomy, others; and a certain Writer of Asia, Marcianus Heracleotes, not y^t, that I know of, turned into Latin, saith thus, Albion **the British Isle hath in it Thirty Three Nations, Fifty Nine remarkable Cities;** and then he subjoyns other things concerning the number of Rivers, Promontories, Havens and Creeks or Bays. I have stretched out this Piece to the death of King Henry the Son of Mawd the Empress by Jeoffrey the Count of Angers in France. In whose time, or near thereabout, are the first beginnings of our Law, as our Lawyers now account. There come in by the way Richard called Cœur de Lion and King John; but there is scarce any thing in that interim to our purpose. I have on purpose passed by Mr. Lambard's *Archæonomia* (or *Antiquites of Law*) without meddling with it at all, only when some obvious occasion did sometimes suggest it for the explaining of what is set down by us. I have divided the whole into two Books; the first closes with the Saxons; the second begins with the Norman Conquest, the most famous Era or Date of the English Government in the reckonings of time.

But however to refer the original of our English Laws to that Conquest (as some make bold to do) is a huge mistake; forasmuch as they are of a far more ancient Date. For it is a remark amongst Statesmen, That new acquired Empires, do run some hazard by attempting to make new Laws: and the Norman did warily provide against this danger, by bestowing upon the yielding conquered Nation the requital of their ancient Law: a requital, I say, but more, as it should seem, for shew than use; and rather to curry favour with the people at the present, than in good deed for the advantage of the English Name. Wherein he in some measure followed well near the practice of Alaricus, who having conquered the Romans, and finding that they took it in dudgeon to be bound up by the Laws of the Goths, though in other things they were compliant enough, restored to them the Roman Laws, but by fly interpretations against the sense and meaning of the Roman Laws he drew these Laws back again to the Gothish. For the times on this side the Normans entrance, are so full of new Laws, especially such as belong to the right of Tenancy or Vassalage; though other Laws have been carefully enough kept up from the time of the

Saxons,

Marcian.
Heracleot.
et segnat.

Philip. Hon-
nor. Theſ. po-
litic. Lat. &
Ital.
Machiavell in
Principe &
comment. ad
Liv. l.1. c.25.
& 26.
Cujacius.
Alber. Gentil.
l. 3. c. 11. de
jure bell.

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Saxons, and perhaps from an earlier date. For neither did the gliding Decrees of that Blazing-Star, which appeared in the Easter of that year, so well known for this Victory, prognosticate, as the change of the Kingdom (a thing which Astrologers affirm) so the abolition of our Laws; and yet in some sense peradventure an alteration of them both; at that rate, I mean, as Jerom Cardan writes, that the Comet in the year 1533. which appeared in Aries (to which Sign, our Island according to Ptolomies doctrine is lyable) under the North side of the Milky Way, being of a Jovial, Martial and Mercurial force and efficacy, was the fore-teller or fore-runner of the change of Religion; which happened three years after in Henry the Eighth's time. But whatever may be thought in other cases, Christianity is exempt from the Laws and over-ruling power of the Stars, and I do but too well perceive, that Cardan's piety is wanting in this and in other instances, and particularly in casting our Saviours Nativity. And why do I too much besides my purpose, trouble my self about these things here? Go thy wayes to our Janus, (for thou canst hardly chuse but own him having two faces) where to speak of our English Brittish Law ('tis no Treason I trow so to call it)

H. Cardan. in
Ptolem. l. 2.
judic. astron.
text. 54.

Nobilitas nec origo latet, sed luce sequente
Vincitur.—

Stat. 1. Silv.

That is,

It's noble rise doth not ly hid, but light
Attending makes it far more clear and bright.

For,

Si nobilitas cunctis exordia pandit
Laudibus, atque omnes redeunt in semina causæ.

Claudian. in
laud. Serene
uxor. Stilic.

That is,

If nobleness doth first commence all praise,
And all things from their seeds do themselves raise.

However it does not at all boast of its Romulus's, its Numa's, its Decemvir's, its 2000. Books, its 4000. and 4000. and 4000. Verses, and the like; which having been digested long since (as it were

L. 2. Secd.
omnia. C. d
vet. jur.
encl.

— non —

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Virg. Aen. I.

non hos quæsum munus in usus,

That is,

A boon not purchas'd for such use as this)

do far and near bear sway in Courts of Law throughout all Europe ;
yet is not the rise and original of our Laws also less to be regarded ; nor
is it perchance for distance of time further from Iapetus than they.
But go thy wayes, I say, and see that thou dost not undertake without
reason and good advice, to fit any thing to the present Age, otherwise
than the changes, the repeals and cancelling parts of Laws, and new
emergencies and vicissitudes of affairs, which were frequent, will give
thee leave. Remember Lucretius in this case alike as in others.

Lucret. I. 5.
de rer. nat.

Quod fuit in pretio, fit nullo denique honore ;
Porro aliud succedit, & è contemtibus exit,
Inq; dies magis appetitur, floretque repertum
Laudibus, & miro' st mortaleis inter honore.

That is,

What was in price, at last hath no esteem ;
whilst somewhat else starts up, and gains repute,
And every day grows more in vogue and brute,
And mortals strangely do it highly deem.

According to what that other , and the greatest Philosopher among the
Poets saith,

Virg. l. 11.
Accid.

Multa dies, variisque labor mutabilis ævi
Rettulit in melius. —

That is,

**Time and the various toyl of changing age
Many things betters, and reforms the Stage.**

And

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And the Greek sentence,

Kaipis γαρ ἐστὶ τῶν νομῶν χρεῖαν πολὺ.

For time to Laws themselves gives Law full oft.

without a world of rubs in the way and slips or distances of years, I saw I was not able to put upon the work the face of a History, and to muster up all things that are wanting. Very many things are so effaced by injury of time, several things have been lost through neglect, nor is the Learned World under a small discontent, or at small variance by reason of this loss. These remains, which are left us, to be handled upon occasion, I have always accounted pleasant researches: I, and perhaps one may say, that those Learned Pieces, which Pomponius, Rivallius, Zasius, Oldendorp, Brissonius, and others, have published concerning the Twelve Tables, and the Laws written upon Oaken Planks, upon Elephants Skins, and in former Ages upon Brass, are not of more use and advantage for the City Spire in Germany, than these Collections may be for Westminster-Hall amongst us. We have said enough and to spare, concerning the model and frame of the Work. For me now to beg the Readers pardon, that I may speak a little concerning myself, seeing it was at my own choice, whether I would give him trouble or no, would be silly. If so be that any one shall shew himself more busie or pragmatical in these Writings of mine, than becomes him;

Tὰ νομία μηνύει τοῖς δρεσοῖς περιγράφειν,

Aristoph.
i 22.

Not knowing (as we say) a Pig from a Dog.

I would not have him ignorant, that I value it no more than a rush, to be lashed with the flouts of prattle-boxes or tittle-tatlers; and such creatures as carry the Goddess Nemesis on pickpack. Nor does any one that is in his wits, when an Ass kicks and flings at him to little or no purpose, regard an idle oafish affront so as to requite it. I paint upon my weather-boards Averrunca, i.e. God forefend, (as they did of old Arse verse upon houses, to preserve them from fire.) May Intercedona, Pilumnus, and Deverra, drive away Silvanus, and keep him off from doing this tender Infant any harm. Well! let Asses and silly Animals command, find fault, tune their pipes; how they will:

(b)

let

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let the envious and ill natured with their sneerings, prate and talk ;
let snotty nosed Fellows and Clowns, that feed upon cockle bread, approve
what I write, or let them flout and fleer, or let them play Jack of both
sides ; it's all fiddle faddle to me, nor would I put a straw between.

Hegesand.
Delphus ap.
Athen. dip.
nos. 4.

Οφρυασταῖσι, περγάλαπησένειοι,
Σακχογενεῖοις φοι.

Brow-benders, making Nose and Chin to meet, with dangling Beards like sacks down to your feet.

Ye rigid Cato's and severe Criticks, do ye take in good part, what I
have done ; nor let me be altogether slighted, if by chance ye shall vouch-
safe to look this way, nor with your skew looks fore-speak my harvest
in the blade. I shall readily and willingly yield the conquest to him
that fairly gets it, and rightfully corrects me. But whoever thou art of
that sort of men,

Horat. Carm.
3. Od. 18.

Per meos fines & aprica rura
Lenis incedas, abeasque parvis
Æquus alumnis.

O're my bounds and sunny plain
Take a gentle walk or t'wain ;
Then depart with friendly mind,
To me and my Lambkins kind.

Plin. epist. ad
Nat. Hist.

Senec. pref.
ad controver.

You, that are candid and courteous, know, that 'tis a very hard matter
to brighten things that are grown out of use, to furnish
things obscure with light, to set off things that are disdained,
with credit, to make things doubtful pass for probable, to as-
sign to every thing its own nature, and every thing to its
own nature ; and that it is a very brave and gallant thing, as
he sayes, for those that have not attained their design, yet to
have endeavoured it ; when the Will (as we say) is accepted for
the Deed. But I know too, that every Cone or point of vision in the
Opticks differs from a right angle ; and I know how odious a thing a
Train or solemn Procession is in the publick Games. Therefore, dear
Reader,

The Authors Preface to the Reader.

Reader, I bid thee heartily farewell ; and with a fortunate endeavour,
fetch out hence, what may make for thy turn. Why do I delay all this
while to let thee in ? Αλλ' ισι χαιρων. Go thy wyes in, o' Gods name.

Laudamus veteres, sed nostris utimur annis :
Mos tamen est æque dignus uterque coli.

Ovid. Fast. 1.

We praise old times, but make use of our own ;
And yet 'tis fit they both alike be known.

Go in and welcome heartily ; and be not unkind to thy Entertainer.

From the Inner Temple London,
Decemb. 25. 1610.

(b 2)

Ths

Τῆς αρχαιολογίας ἐρευνητῆρι Φιλοπονωτάτῳ, καὶ τῷ τῷ
Θέμισος Θιασώτῃ θαυμαζοτάτῳ Ἰωάννῃ τῷ Σιλο-
δάνῳ φιλτάτῳ.

Tῆς νομικῆς φιλέω τρεῖς αἰσθασ, ἔνεκα μῦνοι
Συμπάντων νομικῶν εἰσὶν ἀραιόπεροι.
Σὕο πίνεις φιλέω Σιλόδην, Μαγγειρον ἔρων με
Ευομέτις φιλέω, καὶ σὸν Βάκανε φιλέω
Ἐ, σελίδεοι νόμων αὐτῷ απέφεντας, ἀκανθῶν
Αὐτὸν αναπτυξαμένες ὠγημάν τε νόοι.

ΑΡΚΤΟΥΡ. ὁ ΛΩΣΓΟΣ.

*In laudem dignissimi Authoris, & politioris
literaturæ candidati, Carmen.*

Cum Jovis effoeti Pallas foret orta cerebro,
Vagitus teneros virgo patr'ima dedit.
Accurrit, taciteque novam subducere prolem
Tentat, & abstrusis abdere Juno locis.
Jupiter ingenuam solerti indagine natam
Quæritat, & celeri permeat astra pede;
Stat, cerebrique tuam cernens, Seldene, Minervam
In natæ amplexus irruit ille tuæ.
Atquæ suam credit; parilique ab imagine formæ
Illa fuit suavis, suavis & illa fuit.
Lisque foret, nisi quæ quondam Lucina fuisset,
Musarum testis turba novena fuit.
Quam cognata Jovis tua castra Minerva Minervæ est;
Cum tantum fallax lusit imago Deum?

ALIUD.

Dum tuus ambiguâ Janus, facieque biformi
Respicit antiqua, & posteriora videt:
Archivos Themidis canos, monumentaque legum
Vindicat à veteri semi-sopita situ.
Hinc duplex te Jane manet veterane corona,
Gratia canitie, posteritate decus.

Gulielmus Bakerus Oxon.

ASTRA

A S T R Æ A E B R I T.

Ultima cœlicolūm terras Astræa reliquit.
Tu tamen alma redi & terras Astræa revisē :
Astræa alma redi tuis Britannis :
Et diva alma fave tuis Britannis :
Et diva alma fove tuos Britannos :
Et diva alma regas tuos Britannos :
Cantemus tibi sic tui Britanni :
Fælices nimium ô tui Britanni :
Tu tandem alma redi divum postrema Britannis :
Ultima cœlicolūm terras Astræa revisit.

*Alma redi. sacro redolent altaria fumo
Et tibi sacratis ignibus. Alma redi.
Alma redi. posuit Liber hic primordia juris
Anglos quo poteris tu regere. Alma redi.
Alma redi. tibi templa struit Seldenus : at aram
Qui tibi nil potuit sanctius. Alma redi.*

E. Heyward.

In Epigraphen Libri Carmen.

Quisnam Iō mussat ? Posuisti Enyo
Arma ; jam doctos Iber haūt Batavos
Marte turbat ; Fœdere jam Britannus
Continet Orbem.
*Clusum Audax quis referat latentem ?
Falleris. Diæ Themidis recludo
Intima. Hæc portâ melius feratâ
Pandit Eanus.*

I. S.

T H E



THE
C O N T E N T S
O F T H E
C H A P T E R S.

—
B O O K I.

C H A P. I.

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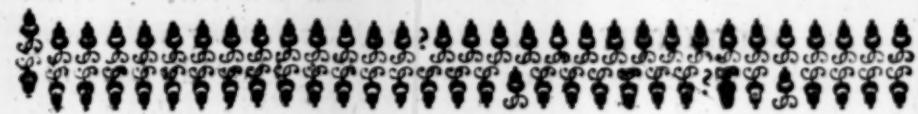
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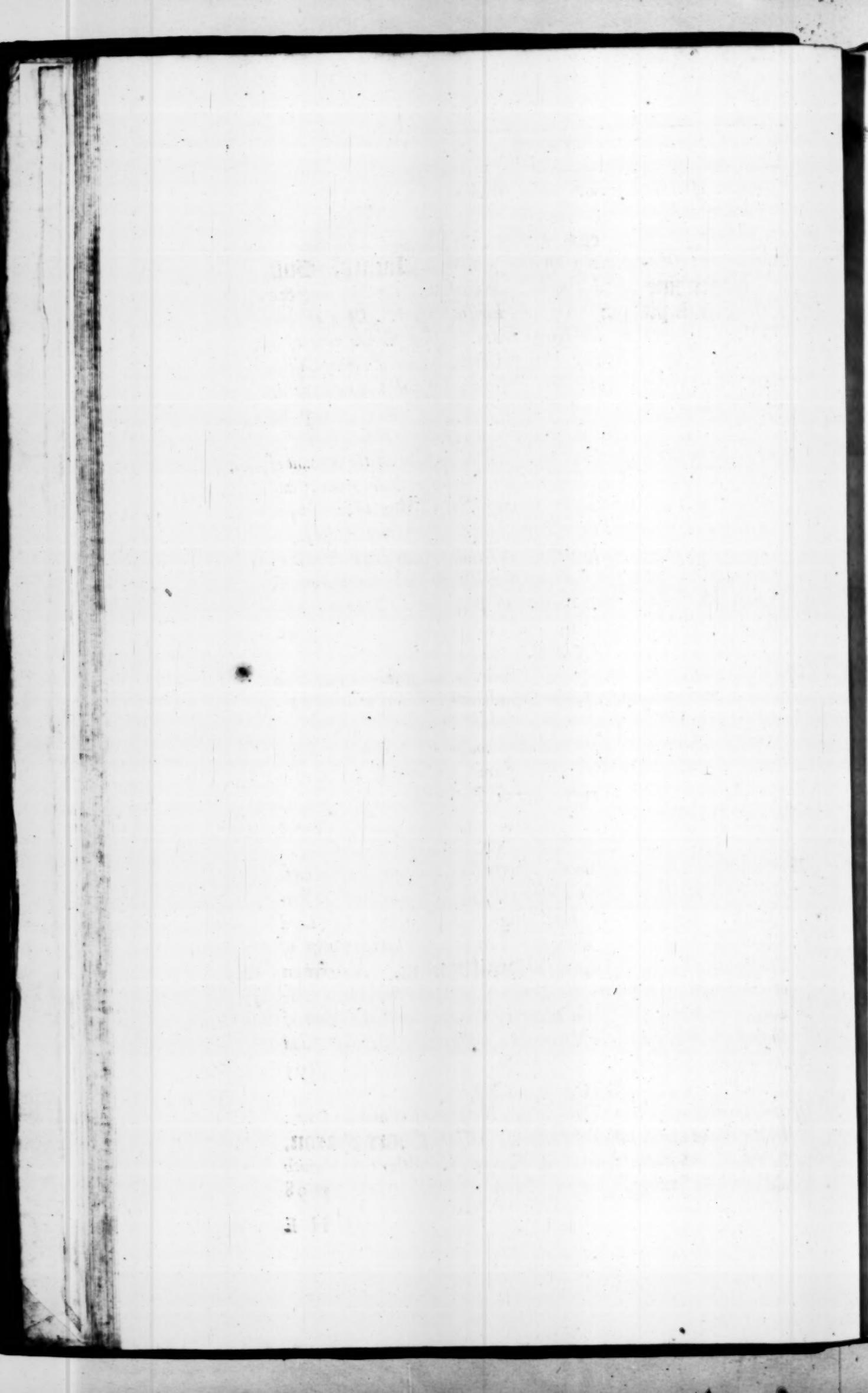
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T H E





THE FIRST
B O O K
OF THE
E N G L I S H
J A N U S.

From the Beginning of the BRITISH
Story down to the NORMAN Conquest.

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The counterfeit Berosus with the Monk that put him forth, both censured. The Story of Samothes the first Celtick King. The bounds of Celtica. From Samothes, say they, the Britans and Gauls were called Samothei. For which Diogenes Laertius is falsely quoted; the word in him, being Semnothei.

HE RE came forth, and in Buskins too (I mean, with Pomp and State) some parcels of years ago, and is still handed about every where, an Author, called *Berosus* a Chaldee Priest (take heed how you suffer your self to believe him to be the same that *Flavius Josephus* so often up and down quotes for a witness) with a Commentary of *Viterbiensis*. Or, rather to say that which is the very truth, *John Annus of Viterbum* (a City of Tuscany) a Dominican Frier, playing the *Leger-de-main*, having counterfeited *Berosus*,

rofus, to put off his own strange stories, hath put a cheat upon the Lady *Muse who is the Governess of Antiquities*, and has hung a Bantling at her back.

After the *Genealogies of the Hebrews* drawn down by that Author, whoever he be, according to his own humour and method, for fear he should not be thought to take in the Kingdoms and Kings of the whole Universe, and the *Etymologies of Proper Names* by whole-sale, as we say; as if he had been born the next day after Grandam *Ops* was delivered of *Jupiter*, he subjoyns **S A M O T H E S** (the very same who is ycleped *Dis*) the Founder of the *Celtick Colonies*, stuffing up odd Patcheries of Story to entertain and abuse the Reader.

Now, this I thought fit by the by, not to conceal, that all that space which is bounded with the River *Rhine*, the *Alpes*, the *Mediterranean Sea*, the *Pyrenean Hills*, and lastly, the *Gascons* and the *British Oceans*, was formerly termed *Celtogalatia*; nay, that *Piolumy* hath comprised all *Europe* under the name of *Celtica*.

Well, as the Commentary of *Annius* has it, "This *Samothes* was Brother to *Gomar* and *Tubal* by their Father *Japhet*, from whom first the *Britans*, then the *Gauls* were called *Samothei*; and especially the Philosophers and Divines that were his followers. And out of *Laertius* he tells us, "For it is evident, that among the *Persians* the *Magi* flourished, among the *Babylonians* and *Affryrians* the *Chaldeans* were famous, among the *Celts* and *Gauls* the *Druids*, and those who were called *Samothei*; who, as *Aristotle* in his *Magick*, and *Sotion* in his *Three and Twentieth Book of Successions* do witness, were men very well skilled in Laws Divine and Humane, and upon that account were much addicted to Religion; and were for that reason termed *Samothei*. These very words you meet with in *Annius*.

The name of *Laertius* is pretended, and the beginning of his Volume concerning the Lives of Philosophers. Why then let us read *Laertius* himself; "and amongst the *Celts* and *Gauls* (saith he) the *Semnothei* as saith *Aristotle* in his Book of *Magick*, and *Sotion* in his *Three and Twentieth of Succession*. Concerning the *Samothei* any other wayes there is not so much as one syllable. That they were men well skilled in Laws Divine and Humane, or that they had their name given them upon that account, only the *Latin* and foisted Edition of *B. Brognol the Venetian* has told us: whereas in truth, in all the ancient *Greek* Copies of *Laertius*, which that great Scholar *Harry Stephen* saw and consulted with (and he sayes he perused Eight or Nine) there is no mention at all made of that busines.

And yet for all that, I cannot perswade my self, that it was only for want of care, or by meer chance, that this slipt into the *Glosses*: It does appear, that there have been able Lawyers and Master Philosophers not only among the *Greeks*, the *Gauls*, and those of *Italy*; but also among the *Northern Nations*, however Barbarous. Witness the *Druids* among us, and among the *Goths*, as *Jornandes* tells us, besides *Cosmicus*, one *Dicenens*, who, being at once King of Men, and Priest of *Phabus*, did together with Natural Philosophy and other parts of good Learning, transmit to posterity a Body of Laws, which they called *Bellagines*; that is, By-Laws.

There are some, who in *Laertius* read *Samothei*; which is a device of those men, who with too much easiness (they are *Isaac Casaubon's* words) that I may say no worse, suffer themselves to be led by the Nose by that counterfeit *Berosus*.

C H A P.

Prol. 2. Geogr.
& 2. quadrip.
& Pausan. l. i.

Jornand. de
reb. Goth.
c. 11.

C H A P. II.

An Account of the Semnothei. Why so called ; the opinion of H. Stephen, and of the Author. Old Heroes and Philosophers went by the names of Demy-gods. The Σεμναὶ θεαὶ or Venerable Goddesses, the same as Eumenides, dispensers of Justice. And by Plutarch and Orpheus they are set for Civil Magistrates. Judges in Scripture so called Elohim, i. e. Gods. These Semnai theai the same as Deæ Matres in an old British Inscription.

And indeed if the *Samothei* had any thing to do with truth, or the *Semnothei* any thing to do with the ancient Law of the *Celts* (in as much as they write, that *Britany* was once in subjection to the *Celtick Kings*) I should judge it not much beside the design of my intended Method to inquire into the name and nature of them both. But they being both one and t'other past all hope, except such a one as *Lucian* returning from the Inhabitants of the Sun, or those of the Moon, would write their History, to speak of them would be more than to lose ones labour. I dare not to say much of them.

"I imagine, says *Harry Stephen*, they were so called, for having the Gods often in their mouths, and that in these words, *οἱ Σεμνοὶ Θεοὶ*, "that is, *The Worshipful Gods*; or for that they themselves were accounted amongst men as a kind of Worshipful Gods: but, writes he, "this latter I do not take to be so likely as the former. But say I for my part, if I might venture my opinion against the judgement of so great a person, I guess this latter to be the likelier of the two.

That the old *Heroes* went by the names of Gods, is a thing we read every where; nor did Antiquity grudge the bestowal of this honour even upon *Philosophers*. Not upon *Amphiaraus* the Prophet; not upon *Aesculapius*, not upon *Hippocrates*, renowned Physicians; they are reckoned among the middle sort of Gods. Thus *Plato* also was accounted by *Antistius Labeo* for a Demy-god, and *Tyrtamus* for his Divine eloquence, had the name of *Theophrastus* (that is, God-like Speaker) given him by his Master *Aristotle*. No wonder then, if thereupon thence forward great Philosophers were called *Semnothei*, and as it were Worshipful Gods. These instances incline me, whilst I only take a view of their Philosophy; whom, if either the authority of *Annus*, or the interpretation of *Brognol* had sufficiently and fairly made out to have been also at the same time Students and Masters of Law, I should hardly stick almost to affirm, that I had found out in what places the true natural spring and source both of their name, and as I may say, of their delegated power is to be met with.

For I have it in *Pausanias* (forbear your flouts, because I waft over into *Greece*, from whence the most ancient Customs both Sacred and Prophane of the *Gentiles* came) I say in *Pausanias* the most diligent searcher of the Greek Antiquities, I meet upon *Mars* his Hill at *Athens*, and also in his *Achaicks* (or Survey of *Achia*) with Chappels of the Goddesses whom the *Athenians* styled Σεμναὶ, that is, *Worshipful*. He himself

Steph. ad
Laert.

Aug. de Civ.
Dei, l.2. c.14.
Laert. lib. 5.

himself also in his *Corinthiacks* makes mention of a Grove set thick with a sort of Oaks on the left side of *Ajopus* a River in *Sicyon* (a Countrey of *Peloponnesus*) where there stood a little Chappel of the Goddesses, whom the *Athenians* termed *Semnai*, the *Sicyonians* called *Eumenides*. The story of *Orestes* and the *Eumenides* or Furies that haunted him is known to every body, nor can you tell me of any little smatterer in Poetry, who doth not know, that they, together with *Adrastia*, *Ramnusia*, *Nemesis*, and other Goddesses of the same stamp, are pretended to be the Avengers of Villanies, and continually to assit *Jupiter* the great God in punishing the wicked actions of Mortals. They were black ones that met with *Orestes*, but that there were white ones too, to whom together with the *Graces* the Ancients paid their Devotions; the same *Pausanias* has left written in his Survey of *Arcadia*. I let pass that in the same Author, she whom some called *Erinnys*, that is a *Fury*; others called *Ihemis* the Goddess of *Justice*.

To be brief and plain; the *Furies*, that is, the Avenging Goddesses sit upon the skirts of the wicked; but the *Eumenides*, that is, the kind Goddesses, as *Sophocles* interprets them (for that they were so called properly without the Figure of *Antiphasis* or contradiction he is our Author) do attend the good and such as are blameless and faultless, and poor suppliants. Nay, moreover *Plutarch* writes in a Poetick strain, that *Alcmaeon* fled from these *Eumenides*; meaning in very deed, that he made his escape from the Civil Magistrates. In a word, the whole business we have been aiming at, *Orpheus* compriseth in two Verses of that Hymn he has made upon those Goddesses.

Soph. in Oedip. in Colon.

Plut. in lib. de Exilio.

*Nat. Comes,
Mythol. l. 3.
c. 10.
Plut. de Osride
& Osiride.*

'Αγα' αἰεν δυνάμενοι τέλον οὐτε
Ομηρού δίκαιοις ἐποπήταις δικαιοῦσθαι εἴσουσι.

which in a short Paraphrase speaks thus;

But ye with eye of Justice, and a face
Of Majesty survey all humane race,
Judges commission'd to all time and place.

See here plainly out of the most ancient Divine among the Heathens, how Judges and the Dispensers of Law pass under the notion of these *Venerable Goddesses*: and it was a thing of custom to term the Right of the Infernal Powers, as well as the Doctrine of the Heavenly ones, a thing Holy and Sacred. What hinders then I pray, but that one may guess, that the Name, and Title, and Attributes or Characters of the *Semnothei* sprang forth and flowed from hence; to wit, from the *Semnai theas* or *Venerable Goddesses*?

Odys. 3.

Exod. 22.

Psal. 82.

2 Paral. 19.

Munst. ad Gen. c. 9.

Plut. de serâ Dei vindictâ.

Homer in his Poems calls Kings *Δικτυόποιοι*, that is, persons bred and nourished by *Jove*; yea, the Eternal and Sacred Scriptures themselvs do more than once call Judges by that most holy name *Elohim*, that is, Gods. "The judgement is Gods, not Mans; and (as *Munster* remarks out of *Rabbi Kimchi*) whatsoever thing Scripture designs to magnifie or express with height, it subjoyns to it the name of God. God (as *Plutarch* has it out of *Plato*, who in his Attick style imitates our *Moses*) hath set himself out as a pattern of the Good, the dreadful syllables of whose very *not-to-be-uttered Name* (though we take no notice of the *Cabalists* art) do strike, move and twitch the ears of Mortals, and one while thorough

thorough ignorance they straggle out of the way, do bring them back into the path or track of Justice ; another while when they are stopt up with prejudice, and are overcast with gloomy darknels, do with a stupendous, dismal and continual trembling shake the poor wretches, and put them into Ague-fits. Nor let that be any hindrance, that so splendid and so manly a name is taken from the weaker Sex , to wit , the Goddesses.

Let us more especially have to do with the *Britans*, as those amongst whom are those choice and singular Altars, not any where else to be met with in the whole World, with this Inscription, DEIS M A T R I B U S , *To the Mother-Goddesses*. Concerning these *Mother-Goddesses*, that excellent Learned Man (that I may hint it by the by) confesses he could with all his search find out nothing ; but if such a mean person as I, may have leave, What if one should imagine , that those Goddesses, whom *Pausanias* in his Attick stories calls Τεράσσας καὶ Τερρωνίδας, were the same as these *Mother Goddesses*? for so those Names import. *The Mother of the Gods* is a Title well known ; wherewith not only *Berecynthia*, but also *Juno*, *Cybele*, *Tellus*, *Ceres*, and other Shees among Mythologists are celebrated and made famous.

Camden.

Be this, if you will, a thing by the by and out of the way ; as he tells us, *No great Wit ever pleased without a pardon*. Relying upon that (the Readers Pardon I mean) I undertook this Job, whatever it is ; and upon confidence of that, I come back to the businels.

Senec. Epist.
115.

C H A P . III.

One Law of Samothes out of Basingstoke concerning the reckoning of Time by Nights. Bodinus his censure of Astrologers for otherwise computing their Planetary Hours. A brief account of some of Samothes his Successors, Magus, Sarron, Druis, from whom the Druids, &c.

WE do not any where meet with any Law enacted by *Samothes* his authority. Yet one only one concerning the account of times, *Basingstoke* the Count *Palatine*, a very modern Historian, attributes to him. He defined, fayes he , the spaces or intervals of all time, not by the number of dayes, but of nights (the same thing, saith *Cesar* of the Gauls, and *Tacitus* of the Germans) and be observed birth-dayes, and the commencements of months and years in that order, that the day should come after the night. Truth is, the *Britans* do at this time observe that fashion, which is most ancient, and highly agreeable to Nature. And the Evening and the Morning was the first day, and so on, fayes the Hebrew Writer, whose Countrey-men the Jews also followed this custom.

Gen. 1.

The *Peripateticks* (i. e. the followers of *Aristotle*) do also at this rate reckon *Privation* in the number of their three Principles; and hereupon *John Bodin* adventures to censure the common Astrologers, that they, according to the course of the Planets as they order it, and repeat it over and over, begin their unequal hours, from the rising, rather than the setting of the Sun.

Bodin. l. 3.
demonoman.

They

Forcat. I. 1.
de Gall. Imp.

They write, that after this *Samothes*, there came in play *Magnus*, *Sarran*, *Druis*, *Bardus*, and others more than a good many, in order of succession. “ *Sarron* was not addicted to make Laws (’tis *Stephanus Forcatulus* helps us to this) but to compose them, to put them into order, “ and to recommend them to practice, as one who reduced those Laws, “ which his Grand-father *Samothes*, and afterward his Father *Magnus* had “ made, into one Volume, and with severe Menaces gave order for the “ keeping of them.

From *Druis* or *Druides* they will have the *Druids* so called, a sort of Philosophers so much famed and talked of in *Cæsar*, *Pliny* and others: believe it who list for me. The whole busines of the *Druids* at present I put off till *Cæsar*’s times.

C H A P. IV.

K. Phranicus 900. Years after *Samothes* being to reside in *Pannonia*, intrusts the *Druids* with the Government. In the mean time *Brutus*, *Aeneas* his Grand-son, arrives and is owned King by the *Britans*, and builds *Troynovant*, i. e. London. *Dunvallo Molmutius* 600. years after is King, and makes Laws concerning *Sanctuaries*, *Roads* or *High-wayes* and *Plow-lands*. *K. Belin* his Son confirms those Laws, and casts up four great *Cause-wayes* through the Island. A further account of *Molmutius*.

Serv. ad 6.
Ænid. *A*bout Nine hundred years after *Samothes*, King *Phranicus* (take it from the British story, and upon the credit of our *Jeoffry*) intrusts the *Druids* with the management of affairs, whilst he himself resided in *Pannonia* or *Hungary*.

In the mean time *Brntus*, the Son of *Sylvius Posthumus* King of the *Latines*, and Grand-child to *Aeneas* (for *Servius Honoratus* in his Comment upon *Virgil*, makes *Sylvius* to be the Son of *Aeneas*, not of *Ascanius*) being happily arrived by Shipping, with *Corinus* one of the chief of his company, and coming to land at *Totnes* in *Devonshire*, the *Britans* salute and own him King. He after he had built *New Troy* (that is, *London*) gave Laws to his Citizens and Subjects; those such as the *Trojans* had, or a Copy of theirs.

A matter of Six hundred years after *Dunvallo Molmutius* being King, ordained (my Authors besides *Jeoffry* of *Monmouth*, are *Ralph of Chester* in his *Polychronicon*, and *Florilegus*) “ that their Ploughs, Temples “ and Roads that led to Cities, should have the priviledge to be places “ of refuge. But because some time after there arose a difference con-“ cerning the Roads or High-wayes, they being not distinguisched by “ certain Limits and Bounds, King *Belin* Son of the forelaid *Molmatius*, “ to remove all doubt, caused to be made throughout the Island four “ Royal High-wayes to which that priviledge might belong; to wit, “ the *Fosse* or *Dike*, *Watlingstrete*, *Ermingtonstrete*, and *Ikenil-
strete*. (But our Learned Countrey-man and the great Light of *Britan*, *William Camden*, *Clarenceaux* King at Arms is of opinion, these

these Cause-wayes were cast up by the *Romans*; a thing that *Tacitus*, *Bede* and others do more than intimate.)

"Moreover, so sayes *Jeoffry*, he ordained those Laws, which were "called *Molmutius* his Laws, which to this very time are so famed amongst the *English*. . Forasmuch as amongst other things, which "a long time after, *Gildas* set down in writing, he ordained, that the "Temples of the Gods, and that Cities should have that respect and "veneration, that whatsoever runagate Servant, or guilty person should "fly to them for refuge, he should have pardon in the presence of his "enemy or prosecutor. He ordained also, That the Wayes or Roads "which led to the aforesaid Temples and Cities, as also the Ploughs of "Husbandmen should be confirmed by the same Law: Afterwards "having reigned Forty years in peace, he dyed and was buried in the "City of *London*, then called *Troynovant*, near the Temple of Concord "(by which Temple, there are not wanting those who understand that Illustrious Colledge on the Bank of *Thames*, consecrated to the Study of our Common Law, now called the *Temple* and) "which he himself had built for the confirmation of his Laws. At this rate *Jeoffry* tells the story; but behold also those things which *Polydore Virgil* hath gathered out of ancient Writers, whereof he wanted no store.

Norden in
Brit. Specul.

"He first used a Golden Crown, appointed Weights and Measures "for selling and buying of things, punisht Thieves and all mischievous sorts of men with the greatest severity; made a great many "High-wayes; and gave order, how broad they should be, and ordained by Law, that the right of those Wayes belonged only to the "Prince; and set dreadful Penalties upon their heads, who should violate that right, alike as upon theirs who should commit any misde-meanour in those wayes. Moreover, that the Land might not "lye barren, nor the people be frequently oppressed or lessened "through Dearth or want of Corn, if Cattle alone should possess the "Fields, which ought to be tilled by men, he appointed how many "Ploughs every County should have, and set a penalty upon them by "whole means that number should be diminished: And he made a "Law, That Labouring Beasts which attended the Plough, should not "be distrained by Officers, nor assigned over to Creditors for money "that was owing, if the Debtor had any other Goods left. Thus much *Polydore*.

C H A P. V.

A brief Account of Q. Regent Martia, and of Mercenlage; whether so called from her, or from the Mercians. Annus again censured for a Forger, and his Berofus for a Fabulous Writer.

THe Female Government of *Martia*, Widow to King *Quintiline*, who had undertaken the Tuition of *Sisilius* Son to them both, he being not as yet fit for the Government, by reason of his Nonage; found out a Law, which the *Britons* called the *Martian Law*. This also among the rest (I tell you but what *Jeoffry of Monmouth* tells me)

me) King *Alfred* translated, which in the *Saxon* Tongue he called *Berthenlage*. Whereas nevertheless in that most elaborate Work of *Camden*, wherein he gives account of our Country, *Berthenlage* is more appositely and fitly derived from the *Mercians*, and they so called from the *Saxon* word *Meape*, that is, a Limit, Bound or Border.

These are the Stories, which Writers have delivered to us concerning those times, which were more ancient than the History of the *Romans*; but such as are of suspected, of doubtful, that I may not say of no credit at all. Among the more Learned, there is hardly any Critick, who does not set down *Annius* in the list of Forgers. And should one go to draw up the account of Times, and to observe that difference which is so apparent in that *Berosus* of *Vitergium* from Sacred Scriptures, and the Monuments of the *Hebrews*, one would perhaps think, that he were no more to be believed, than another of the same name, who from a perpendicular position of the wandring Stars to the Center of the World in the Sign of *Cancer*, adventured to foretel, that all things should be burnt; and from a like Congress of them in *Capricorn*, to say, there would be an universal Deluge. The story is in *Seneca*.

*Senec. Nat.
quaest. l. 3. c. 29*

C H A P. VI.

The story of Brutus canvaſt and taken to be a Poetick Fiction of the Bards. Jeoffry of Monmouth's credit called in question. Antiquaries at a loss in their judgements of these frivilous stories.

Some have in like manner made enquiry concerning our *British* History, and stumbled at it. From hence we had *Brutus*, *Dunvallo* and Queen *Martia*: There are some both very Learned and very Judicious persons, who suspect, that that story is patched up out of Bards Songs and Poetick Fictions taken upon trust, like *Talmudical* Traditions, oft purpose to raise the *British* name out of the *Trojan* ashes. For though Antiquity, as one has it, is credited for a great witness; yet however 'tis a wonder, that this *Brutus*, who is reported to have killed his Father with an Arrow unluckily aimed, and to have been fatal to his Mother at her very delivery of him (for which reason *Richard Vitus* now after so many Ages makes his true name to be *Berris*, that is, *Mortal*) should be mentioned by none of the *Romans*: a wonder, I say, that the *Latin* Writers should not be acquainted with the name of a *Latin* Prince, who gave both Name and Government to *Britany*. Did *Euemerus Messenius* alone ever since the World began, fail to the *Panchoans* and the *Triphyllians*? Indeed it is an ordinary thing for Poets, to ingraft those whom they celebrate in their Poems, into Noble Stocks and Illustrious Families, and by the assistance of their Muses heightning every thing above the truth, to feign and devise a great many stories. And what else were the *Bards*, as *Athenaeus* tells us out of *Pollidomius*; but Poets reciting mens praises in song? How many things are there in that Fabulous Age (which in *Joseph Scaliger*'s account would more aptly be called the *Heroick* Age of the World, I mean) down from that much

*Athen. dip.
nos. 1. 6.*

*Jos. Scal. in
Elench. Orat.
Chron. D. Par.*

much talked of Deluge of *Pyrrha* to the beginning of *Iphitus* his Olympiads ; how many idle stories are there mixt with true ones, and afterwards drest up and brought upon the stage ? " Very many Nations, " sayes *Trithemius*, as well in *Europe* as in *Asia*, pretend they took their " original from the *Trojans* ; to whom I have thought good to lend so " much faith, as they shall be able to perswade me of truth by suffici- " ent testimony. They are frivilous things, which they bring concer- " ning their own Nobility and Antiquity, having a mind as it were openly " to boast, as if there had been no people in *Europe* before the destruc- " tion of *Troy* ; and as if there had been no one among the *Trojans* " themselves of ignoble birth.

Trithem. lib. de secundis.

He who made the Alphabetical Index to *Jeoffry of Monmouth* (who was Bishop of St. *Asaph* too) as he is printed and put forth by *Ascensius*, propt up the Authors credit upon this account, that, as he sayes, he makes no mention any where in his Book, of the *Franks*; by reason forsooth, that all those things almost, which he has written of, were done and past before the *Franks* arrival in *France*. This was a slip surely more than of memory. Go to *Jeoffry* himself, and in his Nineteenth Chapter of his first Book you meet with the *Franks* in the time of *Brennus* and *Belinus* among the *Senones*, a people of *France*: a gross misreckoning of I know not how many hundred years. For the *Franks* are not known to have taken up their quarters on this side the River *Rhine*, till some Centuries of years after *Christ's* Incarnation. For howbeit by Poetick licence and Rhetorical figure *Aeneas* be said to have come to the *Lavinian* Shores, (which had not that name till some time after) yet it were much better, that, both in Verse and Prose, those things which appertain to History, should be expressed according to that form of *Ovid*; where at the burning of *Rhemus* his Funeral Pile he sayes,

Tunc Juvenes nondum facti flevere Quirites,

Ovid. 4. Fast.

that is,

*The young men then not yet Quirites made,
Wept as the body on the Pile they laid.*

And at this rate *Jeoffry* might and ought to have made his Translation; if he would have been a faithful Interpreter.

But as to our *Brutus* whence the *Britans*, *Saxo* whence the *Saxons*, *Bruno* whence those of *Brunswick*; *Frefo* whence those of *Friseland*, and *Bato* whence the *Batavians* had their rise and name; take notice what *Pontus Heuterus* observes, as others have done before him. " Songs or " Ballads, sayes he, and Rhymes made in an unlearned Age, with ease " obtruded falsehoods for truths upon simple people, or mingling falsehoods with truths imposed upon them. For three or four hundred " years ago there was nothing that our Ancestors heard with greater " glee, than that they were descended from the adulterous *Trojans*, from " *Alexander of Macedonia* the Overthrower of Kingdoms, from that Man " queller *Hercules of Greece*, or from some other disturber of the World. And indeed that is too true which he sayes,

*Heuter. de
Vet. Belgio.
l. 2. c. 8.*

Ovid. Metam.
12.

Mensuraque fictis
Crescit, & auditis aliquid novus adjicit auctor.

which in plain English speaks this sense.

Thus Stories nothing in the telling lose,
The next Relater adding still to th' News.

But I will not enlarge.

To clear these points aright, Antiquaries, who are at see-saw about them, will perhaps eternally be at loss, like the *Hebrews* in their mysterious debates, for want of some *Elias* to come and resolve their doubts.

C H A P. VII.

What the Trojan Laws were, which Brutus brought in. That concerning the Eldest Sons Inheriting the whole Estate, confuted. In the first times there were no Positive Laws; yet mention made of them in some very ancient Authors, notwithstanding a remark of some ancient Writers to the contrary.

Well! Suppose we grant there was such a Person ever in the World as *Brutus*: He made Laws, they say, and those taken out of the *Trojan Laws*; but what I pray were those *Trojan Laws* themselves? There is one, I know well enough, they speak of, concerning the Prerogative of the eldest Sons, by which they inherited the whole Right and Estate of their deceased Father. *Herodotus* writes it of *Hector*, Son and Heir to King *Priam*, and *Geoffry* mentions it; but did this Law cross the Sea with *Brutus* into *Brittany*? How then came it, that the Kingdom was divided betwixt the three Brothers, *Locrinus*, *Camber*, and *Albanactus*? betwixt the two, *Ferrix* and *Porrix*? betwixt *Brennus* and *Belinus*? and the like of some others. How came it, that in a Parliament of *Henry the Eighth*, provision was made, that the Free-holds of *Wales* should not thence-forward pass according to that custom, which they call **Gavelkind**? And anciently, if I be not mistaken, most Inheritances were parted among the Children, as we find in *Hesiods* works.

Herodot. in
Euterpe.

Stat. 37 Hen.
8. c. 26.

"Ἄδη τόθεν τοι κλητέρων εἰσανάψεις". —

i. e. We had already parted the Estate.

And to the same purpose many like passages there are in old Poets, and in Holy Writ. But, as I said, what are those *Trojan Laws*? Perhaps the same with those, by which *Nephelococcygia*, the City of the Birds in *Aristophanes*, (or, as we use to say, *Utopia*) is Governed.

The gravest Writers do acknowledge, that those most ancient times were for the most part free from positive Laws. *The people*, so says *Justin hist. l.1.* were held by no Laws: *The Pleasures and Resolves of their Princes past for Laws, or were instead of Laws.* Natural Equity, like the *Lesbian Rule*

Rule in *Aristotle*, being adapted, applied, and fitted to the variety of emergent quarrels, as strifes, ordered, over-ruled, and decided all Controversies. "And indeed at the beginning of the *Roman State*, "as *Pomponius* writes, the people resolved to live without any certain "Law or Right, and all things were governed by the hand and power of the King: For they were but at a little distance from the Golden Age, when

Arist. 5. Eth.

*ff. de Orig.
jur. l. 2.*

— *vindice nullo*
Sponte suâ sine lege fidem rectumque colebant.

*Metam. 1. &c
Lucr. 5. cum
Poetarum tur-
ba.*

That is to say, when

— *People did not grudge
To be plain honest without Law or Judge.*

That which the Heretic of the *Chiliasts* heretofore affirmed, concerning the Sabbath or seventh Millenary, or thousand years of the World. And those Shepherds or Governors of the people, to whom

*August. de
civ. Dei l. 19.
c. 14.*

— *Zōs ἐγγάλιξ
Σενῆτον τὸ ίδε βίωσας —*

Hom. Iliad. 9.

that is,

— *Into whose hand
Jove trusts his Laws and Scepter for Command.*

did Govern them by the guidance of virtue, and of those Laws which the *Platonicks* call the Laws of *second Venus*. "Not out of the ambition "of Rule, as St. *Austin* hath it, but out of duty of Counsel; nor out of "a domineering pride, but out of a provident tenderness. Do you think the *Trojans* had any other Laws? Only except the worship of their Gods and those things which belong to Religion. *It was duty*, says *Se- neca*, *not dignity*, to *Reign and Govern*: And an Eye and a Scepter among the *Egyptians*, were the absolute Hieroglyphicks of Kings.

*Senec. ep. 91.
Plut. de Isid.
& Osirid.*

What? that there is not so much as the word *N O M O Z*, that is *Law*, to be met with in those old Poets, *Orpheus*, *Museus*, or *Homer*, (who was about an hundred and fifty years after the destruction of *Troy*) as *Josephus* against *Appio*, *Plutarch*, and several modern Writers have remarked: I confess, if one well consider it, this remark of theirs is not very accurate. For we very often read in *Homer* and *Hesiod*, the word *θίωσας*, which signifies *Laws*; and in both of them the Goddess *Eunomia* from the same Theme as *Nētos*.

*Joseph. adv.
App. l. 2.
Plut. in lib. de
Homero.*

*Αὐτὸς δὲ εὐνόμιος πόλιν καὶ τὸν γεννητικὸν;
Κοιράνος.—*

which being interpreted, is

*But they by legal methods bear the sway
I' th' City fam'd for Beauties.—*

Plut. lib. de Musica. which is a passage in *Homers hymn to Mother Tellus*, and *Nepos ad hīs*, i.e. *the Law of Song*, (which Musicians might not transgress) is mentioned in his hymn to *Apollo*.

Plato in Minōe. Nay great *Plato*, one beyond all exception, has left it in writing, that *Talus* (who had the management of the *Cretan* Common-wealth committed to him, together with *Rhadamanthus*, the Son of *Jupiter*, by King *Minos*) that he did thrice every year go the circuit through the whole Island (which was the first Country, as *Polyhistor* tells us, that joyned the practice of Laws with the study of Letters) and kept Assizes, giving Judgment according to Laws engraven in brass. I say nothing of *Phoroneus* King of the *Argives*, or of *Nomio* the *Arcadian*; and in good time leave this Subject.

Sol. Polyhist. cap. 6. I could wish I might peruse *Jupiters Register*, wherein he has record-ed humane affairs. I could wish, that the censure of some breathing Library and living study (which might have power over the Ancients, as we read in *Eunapius* that *Longinus* had) or that the memory of some *Æthalides* might help us sufficiently to clear and make out the truth.

Eunap. in vit. Porphyri.

Hence our next passage is to the Classick Writers of the *Latin* style and story.

C H A P. VIII.

An Account of the DRUIDS out of Cæsar's Commentaries, whence they were so called. Their determining in point of Law, and passing Sentence in case of Crime. Their Award binds all parties. Their way of Excommunicating or Outlawing. They have a Chief over them. How he is chosen. Their Priviledge and Immunity.

Plin. nat. hist. 1.16.c.44.
Gorop. in Gal.
Paul. Merula,
in Cosmogr.
part. 2. lib. 3.

Caius Julius Cæsar was the first of the Romans, who has committed to writing the Religious Rites, the Laws and the Philosophy of the *DRUIDS*. Their name is of a doubtful origination, by no means were they so called from that *Druis* or *Druides* we meet with in *Berosus*: But whether they were so termed from a Greek word *Δρῦς*, that signifies an *Oak*, in that they performed none of their devotions without oaken leaves, as *Pliny* and those that follow him are of opinion; or from the Dutch *True-wise*, as *Goropius Becanus* will have it; or from *Trutin*, a word which with the ancient *Germans* signified *God*, as *Paulus Merula* quotes it out of the *Gospel of Othfred* (though in the Angels salutation, in the *Magnificat*, in *Zachariahs* Song and elsewhere, *Trutin* rather denotes *Lord* than *God*; and see whether there does not lye somewhat of the *Druid* in the name of St. *Trutien*, among the people of *Liege*, some having exploded St. *Drudo*) whencesoever they had their name, these Gownmen among the *Gauls*, I and the *Britans* too, were the Interpreters and Guardians of the Laws. The discipline of these *Druids* was first found in *Britany*, and so far as it regards the Civil Court, we shall faithfully subjoyn it out of the forenamed *Cæsar*.

1. "They order matters concerning all controversie, publick and private. So in the Laws of the twelve Tables at the same rate the knowledg of cases, of precedents, of interpreting was in the Colledge of

of Pontiffs or High Priests, and such plainly our *Druïds* were. "If any ill prank had been played, if murder committed, if there were a controversy about Inheritance, about bounds of Land, these were the men that determined it, these amerced rewards and punishments.

2. "if any private person or body of men do not stand to their award, they excommunicate him, that is, forbid him to come to sacrifice, which among them is the most grievous punishment.

3. "Those who are thus excommunicated, are accounted wicked and ungodly wretches, every body goes out of their way, and shuns their company and conversation for fear of getting any harm by contagion. Neither have they the benefit of the Law when they desire it, nor is any respect shown to them.

4. "The *Druïds* have one over them, who has the chiefest authority amongst them.

5. "When he dies, if there be any one that is eminent above the rest, he succeeds in place: But if there be several of equal merit, one is chosen by majority of Votes.

6. "The *Druïds* were wont to be excused from personal attendance in War, nor did they pay taxes with the rest; they were freed from Military employ, and had an immunity of all things. The *Levites* among the *Hebrews*, who were the most ancient Priests in the world, enjoyed the same privilege.

Num. 1. 49.
Ezra 7. 24.

C H A P. I X.

The menage of their Schools without Writing. On other occasions they might use the Greek Letters, as Cæsar saith, yet not have the language. The Greek Letters then were others than what they are now. These borrowed from the Gauls, as those from the Phœnicians. **Ceregy-Druïdion**, or the Druïds Stones in Wales. This Place of Cæsar's suspected. Lipsius his Judgment of the whole Book.

7. Upon the account of that privilege, they had in their Schools (which were most of them in Britany) a great confluence of youth. They are said to learn without Book, says Cæsar, a great number of Verses: Therefore some of them spend twenty years in the discipline. Nor do they judge it meet to commit such things to writing, whereas generally in all other, whether publick affairs or private accounts, they make use of Greek letters.

What? Greek letters? so we read Greek ones. Why! Marseilles, a City of France, which was a Greek Colony of the Phœnicians, had made the Gauls such lovers of Greeks, that, as Strabo the Geographer tells us, they writ their very Contracts and Covenants, Bargains and Agreements, in Greek. The fore-mentioned Julius Cæsar also writes, that there were Tablets found in the Camp of the Switzers, made up of Greek letters.

But, for all that, I would not have any one hence rashly to gather, that the Greek Language was in use to that Age and People, or to these Philosophers and Lawyers. They made use of Greek letters, therefore

Strab. Geogr.
lib. 4.
Cæs. de bello
Gall. l. i.

fore they had the *Greek Tongue* too; this truly were a pitiful consequence. At this rate the *Targum* or *Chaldee Paraphrase*, as *Paulus Merula* has it, and *Goropius* before him, would consist of the *Hebrew Language*, because 'tis Printed in *Hebrew Characters*: And the like may be said of the *New Testament* in *Syriack*, done in *Hebrew letters*.

What? that those very Letters of the *Greeks* in *Cæsars* time, and as we now write them, are rather *Gallick* (as borrowed from the *Gauls*) than *Greek*? He was acquainted with those *Greek letters*, but did not yet know the *Gallick ones*, which learned men do think the *Greeks* took for their Copy, after the *Phænician letters*, which were not altogether unlike the *Hebrew*, were grown out of use. Consult for this *Wolfgangus Lazius* his *Celtae*, *Becanus* his *Gallica*, and if thou hast a mind, *Annius* his *Archilocheus*, *Xenophons Aequivoca*, and what others write concerning *Linus*, *Cadmus*, *Palamedes*, and *Simonides*, the first Inventors of the Alphabet.

In the mean time take this from me, that those ancient and rude *Go-thick Characters*, which *Bonaventure Vulcanius* of *Bruges*, lately put forth, with a little commentary of one without a name, do very much resemble the *Greek ones* (as also the *Russian Characters* do at this day) and that those which are now *Latin letters*, were at first brought over into *Italy* out of *Arcadia*, along with *Nicostrata* the Mother of *Evander*, who was banished his Country.

Vulcan. in
app. ad Jor-
nand. Goth.
Munst. Cosm.
l. 4.

Cæf. bell. Gal.
l. 5.

But that which seems to put the matter out of all dispute, *Cæsar* being about to write to *Quintus Cicero*, who was then besieged somewhere in *Flanders*, among the *Nervians*, by great rewards persuades a *Chevalier*, that was a *Gaul*, to carry the Letter for him: He sends it written in *Greek*, lest peradventure it being intercepted, the *Enemy* should come to know their design. To what purpose should he have done this, if that *Chevalier*, who was a *Gaul*, or if the *Gauls*, or if the very *Druuids* themselves, who had the management of State, had been skilled in *Greek*?

Among the Western Hills of *Denbeigh*, a County in *North-Wales*, there is a place, as I read in our famous Chorographer, commonly called *Ceregy-Drudion*, that is, the *Druuids Stones*, and some small pillars are seen at *Tvoellas*, inscribed with foreign Characters, which some suspect to have been those of the *Druuids*. Who if they have reason so to suspect, I would to God, Time, with his rusty teeth, had spared those Pillars, that so some light might shine from thence to clear this quarrel.

Hotoman c. 2.
Franco-gal-
liz.

Cæf. bell. Gal.
l. 7.

Lipf. Elect.
lib. 2. cap. 7.
& quæst. Epi-
stolic. l. 2. c. 2.

If so be our interpretation of that form of *Cæsars* speaking, which we brought, do not please (as to *Strabo's* testimony, that respects somewhat later times, and perhaps mainly concerns those who lived near the Sea-side) why mayst not thou, with that great Scholar *Francis Hotoman* be of opinion, that the word *Græcis* crept into this Story, either by the carelessness or confidence of Transcribers? For elsewhere in that very Author, where it is said, *dextris humeris exertis*, *Justus Lipsius*, the Prince of *Criticks*, remarks, that the word *humoris* is plainly redundant, thrift in perchance by the Vamper of that Story, *Julius Cæsarius*.

And what so great a man, of so great a judgment as he was, did censure of those *Commentaries* of *Cæsar*, in his Book called *Electa*, or *Choice Piece*, take from himself thus. "I see many patches stitched into that Purple; nor doth the expression it self there every where breath to my Nostrils that golden (as I may so say) Gum, or liquid myrrh, of pure antiquity. Read it, read it over again, you will find many things idly said,"

"said, disjoyned, intricate, vampt, said over and over, that it is not unreasonable to think, but that some Novel and unskilful hand was added to this, as it were, statue of ancient work. Therefore we may be easily cheated, if we stand upon such little scruples of words, as we shall meet with in one *Julius* or other, *Cesar* or *Celsus*.

C H A P. X.

The Druids reckoning of time. An Age consists of thirty Years.

What Authors treat of the Druids. Their Doctrines and Customs
savour of Pythagoras and the Cabalists. They were the eldest
Philosophers and Lawyers among the Gentiles. Some odd Images
of theirs in Stone, in an Abby near Voitland, described.

8. " **T**He *Druids* begun their Months and Years from the sixth Moon
 " (so says *Pliny*) and that which they called an Age after the
 "thirtieth year. In the *Attick* account an Age or Generation, and that
 of a man in his prime and strength, was comprised within the same
 terms, according to the opinion of *Heraclitus*, and as it is in *Herodotus* ;
 nor had *Nestor's* triple Age a larger compass, if one may believe *Eustathius*.

Tiberius drove these *Druids* out of the two *Gallia's*, *Claudius* banisht
 them out of *Rome*, and the worship of the true God Christ, sped them
 out of *Britany*.

What further appertains to the sacred Rites and Doctrine of the *Druids*, (not to speak further of *Cesar*) *Strabo*, *Pliny*, *Diodorus Siculus*, (by the way his Latin Version we do not owe to *Poggio* of *Florence*, as the Books published would make us believe, but to *John Frey* formerly Fellow of *Baliol Colledge* in *Oxford*, if we may believe an Original Copy in the Library of the said Colledge.) Beside these, *Lucan*, *Pomponius Mela*, *Ammianus Marcellinus*, and very lately *Odo Heurnius*, in his *Antiquities of Barbarous Philosophy*, and others have, with sufficient plainness, delivered, yet so, that every thing they say favours of *Pythagoras* (and yet I am ne're a whit the more perswaded that *Pythagoras* ever taught in *Merton-hall* at *Oxford*, or *Anaxagoras* at *Cambridge*, as *Cantilep* and *Lidgate* have it) I and of the *Cabalists* too (for *John Reuchlin* hath compared the discipline of *Pythagoras*, and that of the *Cabalists*, as not much unlike.) Whether the *Druids*, says *Lipsius*, had their *Metempsychosis* or transmigration of Souls, from *Pythagoras*, or he from them, I cannot tell.

The very same thing is alike to be said, concerning their Laws, and the Common-wealths which they both of them managed : They have both the same features as like as may be, as it was with *Cneius Pompey*, and *Caius Vibius*. For the *Samian* Philosopher did not only teach those secrets of Philosophy which are reserved, and kept up close in the inner shrine ; but also returning from *Egypt* he went to *Croton*, a City of *Italy*, and there gave Laws to the *Italians*, (my Author is *Laertius*) and with near upon three hundred Scholars, governed at the rate, as it were of an Aristocracy. The Laws of *Zaleucus* and *Charondas* are commended and had in request. " These men, says *Seneca*, did not in a Hall of Justice, " nor in an Inns of Court, but in that secret and holy retirement of *Pythagoras*

Plin. nat. hist.
I. 16. c. 44.

Plut. de orac.
def. Herod.
Euterp.
Eustath. ad 1.
Iliad.

Senec. in Apoc.
Plin. I. 30. c. 1.

Br. Tuin. Apo-
log antiq. Aca-
dem. Oxon. I.
3. §. 329.

Reuchl. I. 2. de
arte Cabalist.
Lipf. Stoic.
physiolog I. 3.
differ. 12. &
vide Forcatu-
lum I. 1. de
Gall. Imperio.

Laert. I. 8. &
Plut. Orat 2. de
Etu carnium.

Senec. Epist.
91.

Clem. l. 1.
Strom.

"*thagoras*, learn those Institutes of Law, which they might propose to "Sicily and to *Greece*, all over *Italy*, both at that time flourishing. That holy and silent recess was perchance borrowed of the *Druuids*: Forasmuch as what *Clement of Alexandria* witnesseth, heretofore the more secret and mysterious Arts were derived from the *Barbarians* to the *Greeks*.

However the business be, it appears hence plainly, that the *Druuids* were of the oldest standing among the Philosophers of the Gentiles, and the most ancient among their Guardians of Laws. For grant they were of *Pythagoras* his School, yet even at that rate they are brought back at least to the fiftieth or sixtieth *Olympiad*, or if thou wilt, to the Tyranny of the *Tarquins*, which is about two and twenty hundred years ago. 'Tis true, *Pliny*, *Cicero*, *Austin*, *Eusebius* disagree in this point; nor will I catch that mistake by the handle, which draws him, meaning *Pythagoras*, back to *Numa's time*.

To what hath been said, I shall not grudge to subjoin a Surplusage out of *Conradus Celtes*. He is speaking of some ancient Images of stone, which he had seen in a certain Abby at the foot of a Hill that bears Pines, commonly called *Vichtelberg*, in the Neighbourhood of *Voitland*, which he conceives did by way of Statue represent the *Druuids*. "They were "six in number, says he, at the door of the Temple niched into the Wall, "of seven foot apiece in height, bare-footed, having their Heads un- "covered, with a Greekish Cloak on, and that Hooded, and a Satchel "or scrip by their side, their Beard hanging down to their very Privities, "and forked or parted in two about their Nostrils; in their Hands a Book "and a Staff like that of *Diogenes*, with a severe Forehead and a melan- "choly Brow, stooping down with their Head, and fastening their Eyes "on the ground. Which description, how it agrees with those things which are recounted by *Cesar* and *Strabo*, concerning the Golden adornments, the dyed and coloured Vesture, the Bracelets, the shaved Cheeks and Chin of the *Britans*, and other things of the like kind, let them who are concerned look to that.

C H A P. XI.

The *Britans* and *Gauls* had *Laws* and *Customs* much alike, and whence that came. Some things common to them both, set down; in relation to the breeding of their Children, the Marrying of their Wives, the Governing of their Families, burning Women that killed their Husbands, and burning some Servants with the dead Master for company. Together with some Remarks of their publick Government.

Camden.

But forasmuch as *Britannia* gave the beginnings and improvements to the discipline of these *Druuids*, and both *Britans* and *Gauls* had their Government, Customs, Language, Rites sacred and profane, every thing almost the same, or much alike, as Mr. *William Camden* hath some while since most learnedly made out, O Mr. *Camden*, with what respect shall I name thee!

*In freta dum fluvii current, dum montibus umbra
Lustrabunt convexa, ac dum Cynosura Britannos,
Semper honos, nomenque tuum, laudesque manebunt.*

Which in hearty English makes this acknowledgment of his worth,

As long as Rivers run into the Main,
Whilst Shades on Mountains shall the Welkin bide,
And Britans shall behold the Northern Main,
Thy Honour, Name, and Praise shall still abide.

And it is evident, that a great part of *Britany* was once under the Government of *Divitiacus* King of the *Soissons*, a People of *France*. Therefore these following Remarks I thought not amiss to set down as *British*, whether they were imparted to this Isle by the ancient *Gauls* (by reason of its nearness) or whether the *Gauls* owed them to the *Britans*.

9. "They do not suffer their Children to come to them in open sight, "(they are *Cesar's* words) but when they are grown up to that Age, "that they may be able to undergo Military duty and to serve in War.

10. "The men, what mony they receive with their Wives upon account of portion, they lay down so much out of their own Estate upon an appraisement made to make a joint stock with the portion. There is an account jointly kept of all this mony, and the profits of it are reserved; the longer liver is to have both shares, with the profits of the former times.

11. "The men have power of life and death over their Wives, as well as over their Children. Hereupon *Bodin* charges *Justinian* with a falsehood, for affirming that other people had not the same Fatherly power as the *Romans* had.

Bodin. de re-pub. I. 1. c. 4.

12. "When a Master of a Family, who is of higher birth and quality, dies, his Kindred meet together, that if the manner of his death were suspicious, they may by torture, as Servants were used, examine the Wife concerning the busines, and if she be found guilty, they torment her miserably and burn her alive. To this story that most excellent Lawyer, and worthy Lord Chief Justice of the Common Pleas, Sir *Edward Coke*, refers the antiquity of that Law, which we at this day use of devoting to the flames those wicked Baggages, who stain their hands with the nefarious murder of their Husbands.

In prefat. ad I. 6. Relat.

13. "Those Servants and Dependents, who were known to have been beloved by their Master in his life time, were, when the Funeral Rites were prepared, burnt with him for company.

14. "It was ordered, that if any one by flying report or common fame had heard any thing from the borders, that might concern the Common-wealth, he was to make it known to some Magistrate, and not impart it to any body else.

15. "The Magistrates conceal those things they think fit, and what they judge may be of use to the Publick, they discover to the populace.

16. "No body has leave to speak of the Common-wealth, or of publick affairs, but in Council or Parliament.

17. "They came armed into the Council or to Parliament. So the custom of the Nation was, saith *Livy*; and *Tacitus*, the like of the Germans.

Liv. lib. 27.

C H A P. XII.

Women admitted to publick debates. A large commendation of the Sex, together with a vindication of their fitness to govern; against the Salick Law, made out by several examples of most Nations.

18. " **I**t was grown a custom amongst them (we meet with this in *Plut. de virtute mulier.* " *Plutarch*) that they treated of Peace and War with their women in company, and if any questions arose betwixt them and their "Allies, they left it to them to determine. The same custom the *Cecropians*, (that is, the people of *Athens*) once had, as *Austin* relates it out of *Varro*, before the women by majority of Vote carried it for *Minerva* against *Neptune*.

Aug. de Civ. Dei l. 18. c. 9.
Athenaeus.
" Away with you, *Simonides*, and whosoever you are, scoundrels, that unworthily abuse the finer and brighter Sex. Good *Angerona*, thou Goddess of Silence, wash, nay stop *Eubulus* his foul mouth, who denies there were ever any good women more than two in the world, to wit, chaste *Penelope*, and *Alcestis*, who died in her Husband's stead.

Paul. Emil. hist. Franc. l. 10.
How large an honour was paid to the counsels, the prudence, the virtue of the Gaulish Ladies in their chiefest affairs, and not without their desert? How much honour even at this day, is yearly paid at *Ordeance*, on the eighth of *May*, to the Statue of *Jean Darcy of Lorain*, that stands on the bank of the River *Loir*; who obliged her dear Country with a Victory wonderfully got, when all had been lost.

To pass by other arguments, Antiquity holds this Sex to be equally divine as the Male. In Heaven, Sea, Earth, together with *Jupiter*, *Neptune*, *Pluto*, who were the Gods that shared the world, there governed *Juno*, *Salacia*, *Proserpina*, their Goddesses. Marry! in *Varro's* three-fold Divinity, there are more she-Gods than he-Gods.

Ovid. de arte amandi l. 3.

Ipse quoque & cultu est, & nomine fæmina Virtus.

*Tirtue her self, how're it name,
Is female both in Dres and Name.*

But I do not go to act over *Caius Agrippa's* part, by declaiming upon Female excellency. The thing it self speaks more than I can, and the subject is its own best Orator.

Tac. in vit. A. gric. & Annal. l. 14.
I must add one thing which *Cornelius Tacitus* tells us of the *Britans*, "that they were wont to war under the conduct of women, and to make "no difference of Sex in places of Command and Government. Which places yet there are some who stiffly deny, that Women by right should have the charge of; as being, what *Euripides* says of them,

Eurip. in Medea.

Kar's δ' οι δακτυλοί εἰσεγένεται.

that is,

*But ill for the stout seats of War,
Who scarce to look on Iron dare.*

Buc.

But those Authors especially, who, propped up with the *Salick Law* (as they call it) write, that Males only are by right of inheritance capable of the Government of the *French*, they do hold and maintain this argument tooth and nail, with all the unkindness and spite as may be to the *English Law*, which admits of Women to the Throne. They urge, that not only the Laws of *Pharamond*, but Nature her self is on their side. "The Government of women ('tis *Bodin of Anjou* sayes it) "is contrary to the Laws of Nature, which hath bestowed upon men "discretion, strength of body, courage and greatness of Spirit, with the "power of Rule, and hath taken these things from women.

Bodin. de re-pub. l. 6. c. 5.

But, sweet Mr. *Bodin*, are not discretion, strength, courage and the arts of Government; more to be desired and required in those who have the Tuition of Kings in their Minority, than in the Kings themselves till they are come to age? Truly I am of that mind. For why then, pray tell me, did not that reason of yours wring the Guardianship of St. *Louis* out of the hands of the Queen-Mother *Blanch*? why not out of *Isabella's* hands under *Charles the Sixth*? why not of *Catherine de Medicis*, whilst the two Brothers *Francis* and *Charles* her Pupils were incircled with the Crown? why not out of the hands of *Mary, Louis the Thirteenth* being at this very time King?

Were the *Jews*, that I may go back to stories more ancient; blind, that they could not see the defects of Womens nature, in the Government of *Debora*, who triumphed over *Sisera*, and is sufficiently commended in Holy Writ? Were the *Italians* blind under the Government of the most prudent *Amalsincta*? the *Halicarnassians*, under that of the most gallant *Artemisia*? the *Egyptians*, among whom heretofore their Women managed Law-Courts and busines abroad, and the men lookt to home and minded hufwifery? and the *Aethiopians* under their *Nicaula*, whom being very desirous of wisdom, King *Solomon*, the wisest man that has been ever since the world was, honourably entertain'd? were the *Affyrians*, under the Government of their magnificent *Semiramis*? the *Massagetes*, under that of the revengeful Dame *Thomyris*? the *Palmyrenes*, under that of the most chaste *Zenobia*? and that I may make an end once, under that of other excellent women, all Nations whatever, none excepted but the *Franks*? who, as *Goropius* will have it, came to throw off and slight female Government upon this account, that in *Vespasian's* time they had seen the affairs of their neighbours the *Bructeri* in *East Friseland*, whilst that scornful Hag *Velleda* ruled the roast, came to no good issue.

*Pomp. Melia,
l. 1. c. 9.*

*Gorop. in
Franciscis.*

I do very well know, that our perjured Barons, when they resolved to exclude Queen *Mary* from the *English* Throne, made this shameful pretence, "That it would be a shame, for so many Nobles to be subject to a woman. And yet you shall not read, that the *Iceni* (our *Essex-men*, &c.) got any shame by that *Boadicia*, whom *Gildas* terms a *Lioness*, or that the *Brigantes* (i. e. *Tork-shire-men*, &c.) got any by *Chartismandua*. You will read, that they got glory and renown by them both.

Reader, thou canst not here chuse but think of our late Sovereign of Ever Blessed Memory, the Darling of *Britan*, Q. *ELIZABETH*, nor canst thou, whosoever thou art, but acknowledge, "That there was not wanting to a Woman (what *Malmesbury* writes of *Sexburga* "the Queen Dowager of *Centwalch* King of the *West Saxons*) a great Spirit to discharge the duties of the Kingdom; she levied new Armies,

*Malmesb gest.
reg. l. 1. c. 2.*

" kept the old ones to duty ; she governed her Subjects with Clemency,
 " kept her Enemies quiet with threats ; and in a word, did every thing
 " at that rate, that there was no other difference betwixt her and any
 " King in management, but her Sex. Of whose (I mean Elizabeths)
 superlative and truly Royal Vertues a rare Poet, and otherwise a very
 Learned man, hath sung excellently well,

Connub.
Tain. & Isis.

*Si quasdam tacuisse velim, quamcunque racebo
 Major erit : primos actus veteresque labores
 Prosequar ? ad se se revocant praesentia mentem.
 Justitiam dicam ? magis at Clementia splendet.
 Victoriae referam vires ? plus vicit inermis.*

'Tis pity these are not well rendred into English. However take them as they are in blank Verse.

Should I in silente some her Vertues pass,
 Which e're I so pass o're, will greater be :
 Shall I her first deeds and old facts pursue ?
 Present affairs to them call back my mind.
 Shall I her Justice in due numbers sing :
 But then her Clementy far brighter shines.
 Or shall I her victorious Arms relate ?
 In peace unarm'd she hath got more to th' State.

What did the Germans our Ancestors ? they thought there was in that Sex something of Sanctity and foresight, nor did they slight their counsels, nor neglect the answers they gave, when questions were put to them about matters of busines ; and as Superstition increased, held most of them for Goddesses.

Let him then, whatever dirty fellow it was, be condemned to the Crows (and be hang'd to him) who is not ashamed out of ancient Scrolls, to publish to the world, that they (Women) agree with Soldiers (Bully-Rocks and Hectors) mainly in this, " That they are continually " very much taken up with looking after their body, and are given to " lust, that Souldiers themselves are not, nor endeavour to be more " quick and sudden in their Cheats and Over-reachings, that Soldiers " deceive people at some distances of time, but women lye always at " catch , chouse and pillage their Gallants all the wayes they can ; " bring them into Consumptions with unreasonable fittings up ; And other such like mad rude expressions he useth, not unfitting for a Professor in Bedlam Colledge.

Plato de rep.
lib. 5.
Arist. Polit.
l. 1. c. ult.
Trismegist.

Plato allowed Women to govern, nor did *Aristotle*, (whatever the Interpreters of his *Politicks* foolishly say) take from them that privilege. Virtue shuts no door against any body, any Sex, but freely admits all. And *Hermes Trismegistus* that Thrice great man in his *Pæ-mander* according to his knowledge of Heavenly concerns (and that sure was great in comparison of what the Owl-ey'd Philosophers had) he ascribes the mystical name of *Male-Female* to the great Understanding, to wit, God, the Governour of the Universe.

They (the good women I have been speaking of) from their Cradle (at this rate men commonly talk of them) do too much love to have the Reins of Government, and to be uppermost. Well ! be it so, that they

they do love to govern? and who is it doth not love them? Now a sin and shame be it for Lovers to grudge to their beloved, that which is most desired and wished by them: nor could I forbear out of conscience with my suffrage, to assist as far as I could, that Sex, which is so great and comfortable an importance to mankind, so sweet a refreshment amidst our sharpest toils, and the vicissitudes of life; and in a word, is the dearest gift that Dame Nature could bestow upon Man.

But let us now return to *Cesar's Gauls* again.

C H A P. XIII.

Their putting themselves under protection by going into great mens service. Their Coins of money, and their weighing of it. Some sorts of flesh not lawful to be eaten by them.

19. " **V**ery many of them, when they are opprest with Debt or with great Taxes, or with the injurious oppression of great men, put themselves out to service to the Nobles. Over such they have the same Right or Authority, as Masters have over their Servants or Slaves.

These things following are expressly related also of the *Britans* themselves.

20. " They use Brass Coin or Rings (some read it, Plates) of Iron proportion'd to a certain weight, instead of money. But, (faith Solinus, a more modern Historian) they dislike and disallow of Markets or Fairs or Money; they give and take Commodities by way of Barter.

Solin. Polyhist: cap. 35.

Camden is of opinion, that the custom of Coining Money, came in along with the *Romans* among the *Cattieuchlani*, that is, the people of *Buckinghamshire*, *Bedfordsire* and *Hartfordsire*. He takes notice out of *William the Conqueror's Book of Rates* or *Dooms-Day Book* (which is seasonable to mention upon this Head of Coins) that as amongst the old *Romans*, so amongst our Ancestors, money was weighed (as *Geruase of Tilbury* also tells us) and so told out and paid down. Now they paid Customs to the *Romans*; and for this purpose they had Coins stamped and marked with various shapes of living Creatures and Vegetables, which ever and anon are digged up out of the ground. And we read in a very ancient Chronicle of the Monastery of *Abendon*, which had two Kings *Cissa* and *Ina* for its founders, that at the laying the first foundations, there were found very old Coins engraven with the Pictures of Devils and Satyrs. One may very well suppose them to be *British* Coins.

V. Plut. quæst.
centuriat.
Rom. 41.

Br. Tuin.apo-
log. Oxon.
l. 2. §. 77.

21. " They do not think it lawful to taste of the flesh of Hare, or " Hen, or Goose, and yet they keep these Creatures for pleasure and " diversion sake. Why they forbore only Hare, and Hen, and Goose, I am not able to give the reason. I perceive something of *Pythagoras*, and something of the *Jewish Discipline* mixt. For that Philosopher of *Samos* abstained from the eating of Flesh, not in general from all, but with a certain choice from that of some particular Creatures.

V. Plut. Sym-
pos. l. 4. c. 5.

Laert. l. 8.

Plut. symp.
l. 8. c. 8.

C H A P.

C H A P. XIV.

Community of Wives among the Britans, used formerly by other Nations also. Chalcondylas his mistake from our Civil Custom of Saluting. A rebuke of the foolish humour of Jealousie.

22. “**T**hey have ten or twelve of them Wives in common amongst them, and especially Brothers with Brothers, and Fathers with their Sons; but what children are born of such Mothers, they are fathered upon them by whom they were first lain with, when they were Maids. O villany and strange confusion of the rights of Nature!

Georgic. 3.

Dii meliora piis, erroremque hostibus istum!

which in Christian English speaks thus.

Good God! For th' pious better things devise,
Such Ill as this I wish not t' Enemies.

However let not this *Platonick* community of Wives be more reproach to the *Britans*, than that promiscuous Copulation which was used by the *Thuscans*, and before *Cecrops* his time (who for appointing Marriage, that is, joyning one Man and one Woman together, was termed *Διονύσις*, i.e. as one may say *Two-shaped*) by the *Athenians*, (as *Theopompus*, *Suidas* and *Athenaeus* report it) was to them. Besides, *Eusebius* in his *Evangelical Preparation* writes, that our people for the most part were contented with one single Marriage.

Athen. dip.
nos. l. 12. & 13.
Suid. in Ki-
xpa. 1.
Euseb. prez-
par. Evang.
l. 6.

Apud Abrah.
Ortel. In The-
at. Mundi.

Munster. Bo-
ēmus, &c.

Did not, may one think, *Chalcondylas* mistake *Cesar's* meaning, who a hundred years ago and upwards setting himself to write History at *Athens*, and peradventure over-carelessly drawing ancient Customs down to the last Age, ventured to affirm of the *Britans* his Contemporaries, “That when any one upon invitation enters the house of a “friend, the Custom is, that he first lye with his friends Wife, and af-“ter that he is kindly entertained? Or did that officious kiss, the Ear-nest of welcome, which is so freely admitted by our Women from strangers and guests, which some take particular notice of as the cu-stom of our Countrey, put a trick upon *Chalcondylas*, and bring him into that mistake?

Theocr. Ei-
dyll. 3.

Ἐστὶ δὲ καὶ κεροῖς φιλαράντων ἀδιά τιμή.

sayes *Theocritus* of old, that is,

In empty kisses there is sweet delight.

And,

And,

Qui vult cubare, pangit saltē suavium,

Plut. Cerci.

fayes the Servant in *Plantus*,

*He that would a woman win,
With a kiss he doth begin.*

And that other fellow,

Quaro deinde illecebram stupri, principio eam suavium posco. And
Et jam illud non placet principium de osculo, fayes jealous *Amphitruo* to
his wife *Alcumena*. And *Agesilau*s mistrusting his wanton Genius, refu-
sed the buss or salute of a handsome beautiful youth. For as he fayes,

Id. Amphitt.

Id. Cafinā.

Plut. de aud.
Poet.

— *Parva leves capiunt animos,*

Ovid. de art.
am. l. 1.

that is,

**Small matters kindle the desire,
And a loose Spirit's soon on fire.**

This our *Grecian* knew well enough, and perchance thought of that
unlucky hint,

— *Si non & cetera sumpsit,
Hec quoque, que sumpsit, perdere dignus erat.*

Moreover, that great Philosopher of Lawyers *Baldus*, hath set it down
for a rule, that the Fathers consent and betrothal is ratified and made
good by the Daughters admitting the Wooer to kiss her. Which point
of Law it would be very ridiculous to imagine should concern us, with
whom both Maids and married Women do easily afford, and civilly too,
them that salute them a kiss, not such as *Catullus* speaks of Billing like
Doves, hard Buffes or wanton Smacks, but slight modest chaste ones,
and such as Sisters give to Brothers. These civilities, when omitted,
are always signs of Clownishnes ; when afforded, seldom are accounted
signs of Whorishnes. Nor do the Husbands in this case (unless it
be perhaps some Horn-mad-Cuckold) with a wrinkled Forehead shake
their Bull-feathers, or so much as mistrust any thing as upon jealousie of
this custom.

Bald. l. 5.
confil. 78.
Alber. Gentil.
de nupt. l. 2.
c. 13.

It may be *Chalondylas* being a little pur-blind, saw these passages as it
were through a grated Lattice, and made ill use of his mistake : I mean,
whilst he compared our *Britans*, who upon a Matrimonial confidence
trust their Mates honesty, with the jealous *Italians*, *Venetians*, *Spaniards*,
and even his own Countrey-men. Which people, it is a wonder to
me, they should so warily, with so much diligence and mistrust set pin-
folds, curning Spies and close attendance, Locks and Keys, and Bars
and Bolts upon their *Madonna*'s Chastity (most commonly in my
conscience all to no purpose) when that which he has said is as good
as Oracle, though a wanton one.

Quod

Ovid. amor.
I. 2. eleg. 19.
Id. I. 3. eleg. 4.
Id. de remed.
amor. I. 2.

*Quod licet, ingratum est: quod non licet, acrius urit.
Ferreus est, si quis, quod sinit alter, amat.
Siqua, metu dempto, casta est, ea denique casta est:
Quae, quia non liceat, non facit, illa facit.
Qui timet, ut sua sit, ne quis sibi subtrahat illam;
Ille Machaoniâ vix ope sanus erit.*

In English thus,

What's fr̄e, 's unpleasant; what's not, moves desire.
He's thick skull'd, who doth things allow'd admire.
Who, fear aside, is chaste, she's chaste indeed;
Who, cause she can't, forbears, commits the deed.
Who's wife mistrusts, and plays the jealous whelp,
Is mad beyond physicians art and help.

Who does not know, that Natures byas runs to things forbidden?
and he who attempts unlawful things, does more often lose those which
are lawful. Marry! that free usage of the hot Baths of Baden in Ger-
many, Men and Women together, is much safer than being jealous.

Virg. in Cœli.

*Quis non bonus omnia malit
Credere, quam tanto sceleri damnare puellam?*

That is,

What good man would not take all in best sense,
Rather by living undisturb'd and fr̄e;
Than by distrustful foolish Jealousie
His Lady force to quit her Innocence?

But we have taken that pains upon a thing by the By, as if it were our
proper business.

C H A P. X V.

An account of the British State under the Romans. Claudio wins
a Battel, and returns to Rome in Triumph, and leaves A. Plautius
to order affairs. A Colony is sent to Maldon in Essex, and to
several other places. The nature of these Colonies out of Lipsius.
Julius Agricola's Government here in Vespasian's time.

Malmesb. de:
gest. reg. I. 1.
c. 1.

JUlius Cæsar gave a sight of Britanny to posterity, rather than made a full
discovery or a delivery of it. However Malmesbury fayes, "that he
"compelled them to swear obedience to the Latin Laws, certainly he
did scarce so much as abridge the inhabitants from the free use of their
own Laws; for the very Tributes that were imposed upon them, they
in a short time shook off, by revolting from the Roman yoke. The same
liberty they used and enjoyed to all intents and purposes during Au-
gustus, Tiberius and Caligula's Reigns.

Aulus

Aulus Plantius as General by order of *Claudius Cesar*, brought an Army into Britany. *Hour ἡ ἀραιος (so saith Dio) επιτάσσεται τοις ταχαῖς* that is, *The inhabitants at that time were subject to divers Kings of their own.* He overcame in battel Prince *Cradock* and *Togodunus* the two Sons of King *Cunobellinus*; afterwards *Claudius* himself came over into the Island, fought a set battel; and having obtained the Victory, he took *Maldon* in *Essex*, the Royal City of *Cunobellinus*, disarmed the inhabitants, left the government of them, and the subduing of the rest of the people to *Plantius*, and went back himself to *Rome*, where he was honoured with a most splendid and stately Triumph. For this was he, of whom *Seneca* the Tragedian speaks:

Dio hist. Rom.
l. 60.

*Cuique Britanni terga dedere,
Ducibus nostris ante ignoti,
Jurisque sui.—*

Senec. in
Octav. act.

which may be thus Englished,

To whom bold Britans turn'd their back,
Our Captains formerly unknown,
And govern'd by Laws of their own.

The Island being reduced great part under the *Romans* power, and into a Lieutenancy, a Colony is brought down to *Maldon* (in *Essex*) as *Tacitus* and *Dio* has it, with a strong party of Veterans, and is planted up and down in the Countrey they had taken, "as a supply against those "that would rebel, and to train up their fellows or Allies to the duties "of the Laws. An old Stone speaks thus of that Colony,

Tac. annal.
l. 12.
Dio hist. l. 60.

CN. MUNATIUS M. F.
PAL. AURELIUS.
BASSUS PROC.
AUG.

Camden. &
Lipf. ad l. 12.
Tac. num. 75.

PRÆF. FABRO. PRÆF. COH. III. SA-
GITARIORUM. PRÆF. COH. ITERUM.
II. ASTURUM. CENSITOR. CIVIUM.
ROMANORUM. COLONIAE. VICTRI-
CENSIS. QUÆ. EST. IN. BRITANNIA.
CAMALODUNI.

Besides, there was a Temple built and dedicated to *Claudius Ara* (or as *Lipfius* reads it *Arra*) *Aeterne dominationis*; that is, the Altar or Earnest of an eternal Government. But you will say, all this makes little to our purpose: yes, very much; as that which brings from abroad the Roman Orders, Laws, Fashions, and every thing into *Britany*. Near St. Albans, a Town in *Hartfordshire*, there was sure enough the seat of *Cassibellinus* called *Verulams*, and the Burghers, as we learn from *Agel- lius*, were Citizens of *Rome* infranchized, out of their Corporations, using their own Laws and Customs, only partaking the same honorary privilege with the people of *Rome*: but we have the Colony of *Maldon* in *Essex*, which upon another nearer account had all the Rights and Orders of the people of *Rome* derived to it from the freedom of that City, and was not at its own disposal, or to use its own Laws. And

Agell. l. 16.
c. 13.

the like was practised in this Island in more than one place. The Reverse of *Severus* the Emperours Coyn shews it.

Camden.

COL. EBORACUM. LEG. VI. VICTRIX.

and the Coyn of *Septimius Geta* on either side.

COL. DIVANA. LEG. XX. VICTRIX.

This old *Divana* (which is the very same with *Deunana* in *Ptolemy*) if you make it *Englysh*, is *Chester* the chief City of the *Cornavians*, that is, the people of *Cheshire*, *Staffordshire*, *Shropshire*, &c. Again, there is a piece of an old Stone in the Walls of *Bath* in *Somersetshire* near the North Gate has this Inscription upon it,

DEC. COLONIÆ. GLEV. VIXIT.
ANN. LXXXVI.

Colonia ca-
stria, ubi est
the River cal-
led Coln.
Senec. ad
Alb. c. 7.

Glevum was that then which *Glocester* is now. It may be *Colchester* had the same right of priviledge, unless you had rather derive its name from the River *Coln* that runs aside it. In a word (sayes *Seneca* to *Al-*
bina) " How many Colonies has this people of ours sent into all Pro-
vinces ? Where ever the *Roman* conquers, he dwells. See what abundance there was of them in *Britissh* Province ; whose form of Government, and other Laws, that they were different from that of the *Britans*, we may plainly perceive from that very form of their constitution after their detachment ; which I shall present you with out of that famous Antiquary, and every way most Learned and Celebrious person *Justus Lipsius*.

Lipf. de mag.
Rom. l. i. c. 5.

Gild. in Epist.
de excid. Brit.

Their manner and method was (sayes he) " That the Lands should be divided to man by man, and that by three grave discreet persons, whom they used to chuse for this purpose, who did set out their particular Seats and Grounds, and the Town it self (if there were one to be built) and prescribed them Rules and Rights, and the form as it were of a new Common-wealth : Yet in that manner, that all things might bear a resemblance of *Rome* and the Mother City ; and that in the very places themselves the Courts of Law, the Capitols, the Temples, the State-houses or Town-halls might be according to that model, and that there might be in the Government or Magistracy two persons as Bailiffs in most places, like the two *consuls* at *Rome* ; in like manner Surveyors and Scavengers, Aldermen of the Wards and Headboroughs, instead of a Senate or Common Council as we may call it.) This is *Lipsius* his account ; so that *Beatus Gildas* is not much out of the way, when he sayes, it was reckoned not *Britannia*, but *Romania*. And an ancient Copy of Verles, which *Joseph Scaliger* has rescued out of its rust and mouldineſs, has it :

Mars pater, & nostra gentis tutela Quirine,
Et magno positus Cæsar uterque polo;
Cernitis ignotos Latium sub Lege Britannos, &c.

that

that is, in English,

Sire Mars, and Guardian of our State
Quirinus bight after thy fate,
And Cæsars both plac'd near the Pole
With your bright Stars ye do behold,
And th' unknown Britans aw,
Observe the Roman Law.

The stately Seraglio or Building for the Emperours Women at *Ventia* Notitia Provinc.
Betgarum (a City at this day called *Winchester*) and other things of that kind I let pass.

In the time of the Emperours *Vespasian*, *Titus* and *Domitian*, *Julius Agricola*, *Tacitus* his Wives Father, was Lord Deputy Lieutenant here. He encouraged the Barbarous people to Civil fashions, insomuch that they took the *Roman* habit for an honour, and almost every body wore a Gown ; and as *Juvenal* has it in his Satyr,

Gallia Causidicos docuit facunda Britannos.

Juvenal.
Sat. 6.

The British Lawyers learnt of yore,
From the well-spoken French their loze :
T'imp'y, hereafter we should see
Our Laws themselves in French would be.

C H A P. XVI.

In Commodus his time King Lucy embraces the Christian Religion, and desires Eleutherius then Pope, to send him the Roman Laws. In stead of Heathen Priests, he makes three Arch-Bishops and twenty eight Bishops. He endows the Churches, and makes them Sanctuaries. The manner of Government in Constantine's time, where ends the Roman account.

IN Commodus the Emperours time the Light of the Gospel shone afresh upon the Britans. *Lucius* the first King of the Christians (for the Romans, as in other places, so in *Britany*, made use of even Kings for their instruments of slavery) by the procurement of *Fugatius* and *Damianus* did happily receive from Pope *Eleutherius* the Seal of Regeneration (that is, Baptism) and the Sacred Laws of eternal salvation. He had a mind also to have the Civil Laws thence, and desired them too. *Ovid* long since had so prophesied of *Rome* :

*Platis. in vit.
Eleutherii.*

Juraque ab hac terrâ cetera terra petet.

Ovid. Fast. l. 6.

that is,

And from this Countrey every other Land
Their Laws shall fetch, and be at her command.

E 2

Now

To. Fox Hist.
Eccl. I. 1.

Now *Eleutherius* wrote him this answer: " You have desired of us, " that the *Roman* and *Cesarean* Laws may be sent over to you; that you " may, as you desire, use them in your Kingdom of *Britanny*. The *Roman* and *Cesarean* Laws we may at all times disprove of, but by no " means the Law of God. For you have lately through Divine mercy " taken upon you in the Kingdom of *Britanny* the Law and Faith of " Christ; you have with you in the Kingdom both pages of Holy Writ, " (to wit, the Old and New Testament). Out of them, in the name " and by the favour of God, with the advice of your Kingdom, take " your Law, and by it through Gods permission, you may govern your " Kingdom of *Britanny*. Now you for your part are Gods Vicegerent " in your Kingdom.

Howsoever by injury of time the memory of this great and Illustrious Prince King *Lucy* hath been imbezill'd and smuggled, this upon the credit of the ancient Writers appears plainly, that the pitiful fopperies of the Pagans, and the Worship of their Idol-Devils did begin to flag, and within a short time would have given place to the Worship of the true God, and that Three *Arch-Flamens* and Twenty Eight *Flamens*, i. e. Arch-Priests, being driven out, there were as many Arch-Bishops and Bishops put into their rooms (the Seats of the Arch-Bishops were at *London*, at *York* and at *Caerleon in Wales*) " to whom, as also to other " Religious persons, the King granted Possessions and Territories in " abundance, and confirmed his Grants by Charters and Patents. But " he ordered the Churches (as he of *Monmouth* and *Florilegus* tell us) " to be so free, that whatsoever Malefactor should fly thither for refuge, " there he might abide secure, and no body hurt him.

Zofim. I. 2.

Notit. Pro-
vinc. utr.
Imper. I. 1.
comm. c. 5. &
I. 2. comm.
Pancr. c. 69.

In the time of *Constantine* the Emperour (whose Pedigree most people do refer to the *British* and *Royal Blood*) the Lord President of *France* was Governor of *Britanny*. He together with the rest, those of *Illyri-
cum or Slavonia*, of the *East* and of *Italy*, were appointed by the Empe-
rour. In his time the Lord Deputy of *Britanny*, (whose Blazonry was a Book shut with a green Cover) was honoured with the Title of *Spe-
ctabilis*. There were also under him two Magistrates of Consular Dignity, and three Chief Justices (according to the division of the Province into five parts) who heard and determined Civil and Criminal Causes.

And here I set up my last Pillar concerning the *Britans* and the *Roman* Laws in *Britanny*, so far forth as those Writers which I have, do supply me with matter.

C H A P. XVII.

The Saxons are sent for in by Vortigern against the Scots and Picts, who usurping the Government, set up the Heptarchy. The Angles, Jutes, Frisians, all called Saxons. An account of them and their Laws, taken out of Adam of Bremen.

Afterwards the *Scots* and *Picts* making incursions on the North, and daily havock and waste of the Lands of the Provincials, (that is, those who were under the *Roman Government*) they send to desire of the *Romans* some Auxiliary Forces. In the mean time, *Rome* by a like misfortune, was threatned with imminent danger, by the fury of the *Goths*: all *Italy* was in a fright, in an uproar. For the maintaining of whose liberty, the Empire being then more than sinking, was with all its united strength engaged and ready prepared. So this way the *Britans* met with a disappointment. Wherefore *Vortigern*, who was Governor in Chief, sent for supplies from the neighbouring *Germans*, and invited them in. But according to the Proverb, *Carpathius leporem*; He caught a *Tartar*: for he had better have let them alone where they were. Upon this account, the *Saxons*, the *Angles*, the *Jutes*, the *Frislanders* arrive here in their Gally-Foists in the time of *Theodosius* the younger. At length being taken with the sweetnes of the soil (a great number of their Countrey-men flocking over after them, as there were at that time fatal flittings and shiftings of quarters all the World over) and spurred on with the desire of the chief command and rule, having struck up a League with the *Picts*, they raise a sad and lamentable War against their new entertainers, in whole service they had lately received pay: and to make short, in the end having turned the *Britans* out of their Ancestors Seats they advanced themselves into an *Heptarchy* of *England*, so called from them.

Albeit they pass by various names, yet in very deed they were all of them none other but *Saxons*. A name at that time of a large extent in *Germany*; which was not, as later Geographers make it, bounded with the Rivers of the *Elb*, of the *Rhine* and the *Oder*, and with the Confines of *Hessen* and *Duringen*, and with the *Ocean*; but reached as far as into the *Cimbrian Chersonesus* now called *Jutland*. It is most likely, that those of them that dwelt by the Sea-side, came over by Ship into *Brittany*. To wit, at first *Horsas* and *Hengistas* came over out of *Batavia*, or the Low Countreys, with a great company of *Saxons* along with them; after that out of *Jutland* the *Jutes* (for *Janus Douza* proves, that the *Danes* under that appellation seised our Shores, in the very beginning of the *Saxon Empire*:) out of *Angela*, according to *Camden* about *Flemsburg* a City of *Sleswick*, came the *Angles*; out of *Friseland* (*Procopius* is my Author) the *Frixons*. One may without any wrong call them all *Saxons*; unless *Fabius Quastor Æthelwerd* also did his Nation injury, by calling them so. He flourished Six hundred and fifty years ago, being the Grand-child or Nephew of King *Æthelulph*, and in his own words discourses, "That there was also a people of the *Saxons* all along "the Sea-coast from the River *Rhine* up to the City *Donia*, which is "now commonly called *Denmark*. For it is not proper here to think
of

*Jas. Douz. annal. Holland.
l. 1. & 6.*

*Procop. bell.
Goth. l. 4.*

*Æthelwerd.
lib. 1. fo. 474.*

of Denmark in the neighbouring Territories of Utrecht and Amsterdam, by reason of the narrowness of that tract.

Adam Breim.
hist. eccles.
Brem. & Ham-
burg. c. 5. ex
bibliotheca
Henr. Ranzo-
vii.

Those few Observes then, which Adam of Bremen hath copied out of Einhard concerning the Saxons, forasmuch as our Ancient Saxons I suppose, are concerned in them, I here set down in this manner and order.

C H A P. XVIII.

The Saxons division of their people into four ranks. No person to marry out of his own rank. What proportion to be observed in Marriages according to Policy. Like to like the old Rule. Now Matrimony is made a matter of money.

23. **T**He whole Nation consists of four different degrees or ranks of men ; to wit, "of Nobles, of Free-men born, of Free-men made so, and of Servants or Slaves. And Nithard speaking of his own time, has divided them into Ethelings, that is, Nobles, Frilings, that is, Free-men, and Lazzos, that is, Servants or Slaves.

It was enacted by Laws, "That no rank in cases of Matrimony do pafs the bounds of their own quality ; but that a Noble-man marry a Noble-woman, a Free-man take a Free-woman, a Bond-man made Free be joyned to a Bond-woman of the same condition, and a Manservant match with a Maid-servant. And thus in the Laws of Henry Duke of Saxony, Emperour Elect, concerning Justs and Tournaments, "When any Noble-man had taken a Citizen or Countrey-woman to Wife, he was forbid the exercise of that sport to the third Generation, as Sebastian Munster relates it. The Twelve Tables also forbade the marriage of the Patricii or Nobles with the Plebeians or Commons ; which was afterwards voided and nulled by a Law which Canuleius made, when he was Tribune of the people. For both Politicians and Lawyers are of opinion, That in marriages we should make use of not an Arithmetical proportion, which consists of equals ; nor of a Geometrical one, which is made up of likes ; but of a Musical one, which proceeds from unlike notes agreeing together in sound. Let a Noble-man that is decayed in his estate, marry a Commoner with a good fortune ; if he be rich and wealthy, let him take one without a fortune : and thus let Love, which was begot betwixt Wealth and Poverty, suite this unlikeness of conditions into a sweet harmony ; and thus this disagreeing agreement will be fit for procreation and breed. For he had need have a good portion of his own, and be nearer to Crassus than Iras in his fortunes, who, by reason of the many inconveniences and intolerable charges of Women, which bring great Dowries, doth, with Megadorus in Plautus, court a Wife without a Portion ; according to that which Martial sayes to Priscus :

Plut. in sym-
pos.

Plaut. In Au-
lul. act. 3.

*Vxorem quare locupletem ducere nolim
Queritis? Vxori nubere nolo mea.
Inferior Matrona suo sit, Prise, Marito:
Non aliter fuit fæmina virque pares.*

Martial. I. 8.
Epig. 12.

Which at a looser rate of Translation take thus,

Should I a Wife with a great fortune wed,
You'll say, I should be sweetly brought to bed.
Such fortune will my Liberty undo.
Who brings Estate, will wear the Breches too.
Unhappy match! where e're the potent Bride
hath the advantage wholly on her side.
Blest pairs! when the Men sway, the Women truckle,
There's good agreement, as 'twixt Thong and Buckle.

And according to that of the Greek Poet,

— *Tlu xpi' oavndv ñe.*

Callimach.
epig. 1.

Take, if you'll be rul'd by me,
A Wife of your own degrœ.

But there is little of our Age fashioned to the model of this sense:
Height of Birth, Vertue, Beauty, and whatsoever there was in *Pandora*
of Good and Fair, do too too often give place to Wealth; and that I may Plaut. in Abs
nar. use the Comedians word, to a Purse crammed with Money. And as
the merry Greek Poet fayes,

*τὸν δὲ εἰς ἔργα,
Σοφίην, τεχνὴν κατέχει,
Μόνον ἀργυρεύν θάλπεσσιν.*

Anacreon.
carm. eis
"Egista."

To be Noble or high-born,
Is no argument for Love:
Good Parts of Breeding lye forsooth;
'Tis Honey only they approve.

I come back now to my friend *Adam*.

C H A P. XIX.

The Saxons way of judging the Event of War with an Enemy. Their manner of approving a proposal in Council, by clattering their Arms. The Original of Hundred-Courts. Their dubbing their Youth into Men. The privilege of young Lads Nobly born. The Morgan heb or Wedding-dowry.

Et Tacit.

24. “**T**hey take a Prisoner of that Nation, with which they are to have a War, by what way soever they can catch him, and chose out one of their own Countrey-men ; and putting on each of them the Arms of their own Countrey, make them two fight together, and judge of the Victory, according as the one or the other of them shall overcome. This very thing also *Tacitus* himself hath, to whom *Einhard* sends his Reader. For though he treat in general of the *Germans*, yet nevertheless without any question, our *Saxons* brought over along with them into this Island very many of those things, which are delivered to us by those who have wrote concerning the Customs of the *Germans*. Among which, take these following.

25. “In Councils or publick Assemblies, the King or Prince, (*i.e.* a chief person) according as every ones Age is, according to his Nobility, according to his Reputation in Arms, according to his Eloquence, has audience given him, where they use the authority of perswading, rather than the power of commanding. If they dislike what he sayes, they disapprove it with a Hum and a rude noise. If they like the proposal, they shake and rustle their Spears or Partisans together. It is the most honourable kind of assent, to command the Speaker with the clattering of their Arms. From hence perhaps arose the ancient right of *Wapentakes*.

26. “There are also chosen at the same Councils or Meetings, chief persons (as Justices) to administer Law in the several Villages and Hamlets. Each of those have a hundred Associates out of the Community for their Counsel and Authority. This is plainly the pourtrait of our *Hundreds*, which we still have throughout the Counties of England.

27. “They do nothing of publick or private affair, but with their Arms on ; but it is not the custom for any one to wear Arms, before the City or Community approve of him as sufficient for it. Then in the Council it self, either some one of the Princes or chief persons, or the Father of the young man or some Kinsman of his in token of respect, give him a Shield and a Partisan. This with them stands for the Ceremony of the Gown ; this the first honour of youth arriving at manhood ; before this be done, they seem but a part of the Family ; but after this is over, they are a part of the Common-wealth. The right ancient pattern of dubbing *Knights*, if any where else to be found. *Julius Cesar* sayes almost the very same thing of the *Gauls*. They do not suffer their Children, to come in publick to them, till they be come to Age, that they be able to undergo the Duties of War.

Cæs. de bell.
Gall. l. 6.

28. “A

28. "A remarkable Nobleness of descent, or the high merits of their Fathers, procure even to young Lads the dignity and esteem of a Prince. For, as the *Philosopher* fayes, We owe this regard to Virtues, that we respect them, not only whilst present, but also when they are taken away out of our sight ; and in the Wife mans account, *The glory of Parents, is the honour of their Children.*

Senec. de benefic. l. 4. c. 30.

Proverb. 17.

29. "The Wife doth not bring the Husband a Portion, but the Husband gives the Wife a Dowry. Contrary to what the *Roman Law* faith, That custom is still in use with the *English*, as *Morgangheb* in other places.

C H A P. X X.

Their severe punishments of Adultery, by maiming some parts of the body. The reason of it given by Bracton. The like practised by Danes and Normans.

30. " **T**He Husband if his Wife playes the Whore, cuts off her hair, strips her naked, and turns her out of doors in presence of her Kindred, and drives her through the Streets, lashing or beating her as she goes along. They were formerly in this Northern part of the World, most severe punishers of Adultery, and they had such Laws as were

— *ipso Marti Venerique timenda;*

Juvenal. Sat.

that is, such as would

Put Mars and Venus in a trance
Of fear, amidst their dalliance.

King *Knute* ordered, That a Wife, who took another Passenger on board her than her Husband, and

Canut. legi-
can. 50.

Πονάκις ἐκ πυκτῷ ἀρού ἔχει λιμψα.

Oft times ith' nights away she hies,
And into other harbour flies.

Theognis.

(Well speed thee and thine, fair *Venus* ; nor do I willingly bring these ill tidings to thy tender Ducklings.) should have her Nose and ears cut off.

I remember, *Antinous* in Homer threatens *Irus* with the chopping off his Nose, Ears and Privities ; and *Ulysses* inflicts that very punishment upon his Goat-herd *Melanthius*, for his having been too officious in his pimping attendance upon the Gallants, that haunted the house in his absence. How any one should deserve this penalty, which so disfigures Nature, I do not yet sufficiently understand.

Odyss. 18. § 22.

In Allegoriis
Homeric.

Heracles Ponticus informs us, That Law-makers were wont to maim that part especially which committed the misdemeanour. In testimony of this, he mentions *Tyrius* his Liver as the Shop and Work-house of Lust; and it were no hard matter to bring in other more pertinent instances; and

Pereant partes, que nocuere.

faith some Poet,

*The parts that did the hurt,
Let them e'en suffer for't.*

However it was not *Melanthius* his Ears, and by no means his Nose that offended; no nor the good Wives neither that commits the fact: as *Martial* the merry Wag tells a certain Husband,

*Martial. I. 3.
Epig. 43.*

*Quis tibi persuasit nares abscindere moebo?
Non hæc peccata est parte, marite, tibi.*

that is, with modesty to render it,

*What made thee, angry man, to cut
The Nose of him, that went to rut?
'Twas not that part, that did th' offence:
Therefore to punish that, what sense?*

*Braeton. de
Coronâ l. 3.
c. 28.*

*An. 18 Ed. 3.
fol. 20. à Brit.
ton. cap. 25.*

But who doth not see, that a Woman hath no other parts of her body so lyable to maiming or cutting off? Both those parts make much for the setting her off; nor are there any others in the whole outward frame of the *Microcosm*, which being cut off, do either more disparage beauty, or withal less afflict the animal vertue, as they call it, by which life is maintain'd. Now for those, who of old time did unluckily, that is, without the favour of those Heathen Gods *Prema* and *Mutinus*, to whose service they were so addicted, offer violence to untainted chastity; "the loss of members did await the lust of such persons, "that there might be member for member (they are the words of *Henry Bracton*, a very ancient Writer of our Law, and they are clear testimonies, that the *English* have practised the Law of like for like) *quia virgo, cum corrumpitur, membrum amittit, & idè corruptor puniatur in eo in quo deliquit: oculos igitur amittat propter aspectum decoris, quo virginem concupivit; amittat & testiculos, qui calorem stupri induxerunt.* So long ago,

*Ovid. Meta-
mor. l. 7.*

*Aut linguam aut oculos aut que tibi membra pudorem
Abstulerant, ferro rapiam.*

says *Progne* to her Sister *Philomele*, speaking of the filthy Villain *Tereus*, who had ravished her,

*I'lle cut out his eyes or tongue,
Or those parts which did thee the wrong.*

and

and *Plautus* in his Play called *Penulus*, *Sy. Facio quod manifesto machi
hand ferme solent. Mi. Ruid id est? Sy. Refero vasa salva.*

I remember I have read that *Geoffry de Millers* a Nobleman of Norfolk, for having inticed the Daughter of *John Briton* to an Affignation, and ingaged her with venereal pledges ; being betrayed and trepann'd by the Baggage, underwent this execution ; and suffered besides, whatsoeuer a Fathers fury in such a case would prompt him to do : But withal, that King *Henry* the third was grievously offended at it, dis-inherited *Briton*, banished him, and gave order by Proclamation, that no one should presume, unless it were in his Wives case, to do the like. But these passages are of later date, and since the *Normans* time and from them ; unless you will bring hither that which we meet with in *Alured's Law* concerning a Man and a Maid-servant.

From whence we slide back again to *Tacitus*.

Math. Paris
in H. 3. pag.
1000.

Vid. l. 2. art. 3.

Alured. leg.
can. 29.

C H A P. X X I.

The manner of Inheriting among them. Of deadly Feuds. Of Ver-gild or Head-mony for Murder. The Nature of Country-Tenures and Knights Fees.

31. " **E**very ones Children are their Heirs and Successors, and there was no Will to be. Nor was it lawful with us down to our Grandfathers time, to dispose of Country Farms or Estates by *Will*, unless it were in some *Burroughs*, that had a peculiar Right and Priviledge of their own. "If there be no Children, then, says he, the next of kin shall inherit ; Brethren, or Uncles by the Fathers or Mothers side. Those of the ascending Line are excluded from Inheritances, and here appears the preference of the Fathers side : A Law at this very day usual with the English.

32. " To undertake the Enmities rather than the Friendships, whether of ones Father or Kinsman, is more necessary. Capital enmities, which they call **Deadly Feuds**, are well known to our Northern people. "Nor do they hold on never to be appeased : For even Murder is expiated by a certain number of some head of Cattel, and the whole Family of the murdered Person receives satisfaction. Murders formerly were bought off with Head-mony called *yengild* ; though one had killed a Nobleman, nay the King himself, as we may see in *Athelstan's Constitutions* : But good manners, I suppose, have prevailed above Laws.

33. "The Lord imposes upon his Tenant a certain quantity of Corn or Cattel, or Clothes. We see here clearly enough the nature of Country Land-holders, *Fees* or *Tenures*. As to military or Knights Fees, give me leave to set that down too. *Dionysius Halicarnassus* gives us a very ancient draught and model of them in the *Trojans* and *Aborigines* : *Florus* in the *Cimbrians*, and *Lampridius* in *Alexander Severus*. Both the Northern people and the *Italians* do owe them to the *Huns* and *Lombards* ; but these later according to a more modern form.

Let these things suffice out of *Cornelius Tacitus*, which belong to this Head.

Dion. Halic.
lib. 1.
Flor. Hist.
Rom. l. 9. c. 3.
Lamprid.
V. Bodin. de
rep. l. 2. c. 2.
& Franc. Ho-
tom. disp.
seud. cap. 2.

C H A P. XXII.

Since the return of Christianity into the Island, King Ethelbert's Law against Sacrilege. Thieves formerly amerced in Cattel. A blot upon Theodred the Good, Bishop of London, for hanging Thieves. The Country called **Engelond** by Order of King Egbert, and why so called. The Laws of King Ina, Alfred, Ethelred, &c. are still to be met with in Saxon. Those of Edward the Confessor, and King Knute the Dane, were put forth by Mr. Lambard in his Archæonomia,

Before that the Christian Doctrine had driven out and banished the *Saxon* Idolatry, all these things I have hitherto been speaking of, were in use. Ethelbert (he that was the first King, not only of Kent, but of all England, except Northumberland) having been baptized by Austin the Monk, the Apostle, as some call him, *of the English*) "amongst other good things which by Counsel and Graht he did to his Nation, " (tis venerable Bede speaks these words) he did also with the advice of "wise men, appoint for his peoples use the orders of their proceedings "at Law, according to the examples of the *Romans*. Which having "been written in the *English* tongue (says he) are hitherto, or to this "time kept and observed by them. Among which orders or decrees he "set down in the first place, after what manner such an one should make "amends, who should convey away by stealth any of those things that "belonged to the Church, or to a Bishop, or to the rest of the Orders. In the Laws of some that came after him, as those of King Alfred (who cull'd out of Ethelbert's Acts to make up his own) and those of King Athelstan, Thieves make satisfaction with mony; accordingly as Tacitus says of the Germans, "That for lighter offences those that were convicted are "at the rate of their penalties amerced such a number of Horses or other Cattel. For, as Festus hath it, before Brass and Silver were coyned, by ancient custom they were fined for their faults so much Cattel: But those who medled with any thing sacred, we read had that hand cut off with which they committed the theft.

Bed. hist. Eccl. l. 2. c. 5.

*Fest. verbo
Pecul. & verbo
Oribus.*

Well! but am I mistaken, or was Sacrilege even in the time of the *Saxon* Government punish't as a Capital crime? There is a passage of William of Malmesbury, in his Book *de Gestis Pontificum*, that inclines me to think so. Speaking of Theodred, the Bishop of London when Athelstan was King, he says, "That he had among the common people got the "surname of *Theodred the Good*; for the eminence of his virtues: Only in "one thing he fell short, which was rather a mistake than a crime, "that those Thieves which were taken at St. Edmunds, whom the holy "Martyr had upon their vain attempts tied with an invisible knot (he means St. Edmundsbury in *Suffolk*; which Church these Fellows having a design to rob, are said by miracle to have stood still in the place, as if they had been tied with Cords: These Thieves say) "were by his means or "sufferance given up to the severity of the Laws, and condemned to the "Gallows or Gibbet. Let not any one think that in this middle Age, this *Gallows* or *Gibbet* I spoke of, was any other thing than the *Roman Furca*, upon

*v. Inæ leg.
cap. 13.*

*Malmbs. de
gest. Pontif. l.*

*1. Ranulph.
Higden in Po-
lychron.*

*Joan. Caro-
tenfide nugas
curial. l. 6. c.*

17. Caxt. cap. 56.

upon which people hang and are strangled till they die.

34. "Egbert King of the West-Saxons (I make use of Camdens words) "having gotten in four Kingdoms by conquest, and devour'd the other two "also in hope, that what had come under the Government of one, "might likewise go under one name; and that he might keep up the "memory of his own people the *Angles*, he gave order by Proclamation, "that the *Heptarchy* which the *Saxons* had possest, should be called *Engelond*. John Carnotensis writes, that it was so called from the first coming in of the *Angles*; and another some body says it was so named from *Hengist* a Saxon Prince.

There are a great many Laws of King *Ina*, *Alfred*, *Edward*, *Athelstan*, *Edmund*, *Edgar*, *Ethelred*, and *Knute the Dane*, written in the *Saxon* language; which have lasted till these very times. "For King *Knute* "gave order ('tis *William of Malmesbury* speaks) that all the Laws which "had been made by former Kings, and especially by his Predecessor *E-*"*thelred*, should under pain of his displeasure and a Fine, be constantly ob- "served: For the keeping of which, even now in the time of those who "are called the *Good*, people swear in the name of King *Edward*; not "that he appointed them, but that he observed them. The Laws of *Edward*, who for his piety has the surname of *Confessor*, are in Readers hands. These of the *Confessor* were in *Latin*; those others of *Knute* were not long since put into *Latin* by *William Lambard* a learned man, and one very well vers'd in Antiquity; who has recovered them both, and published the *Saxon* Original with his Translation over against it, Printed by *John Day at London, Anno 1567.* under the Title of *Archeonomia*, or a Book concerning the ancient Laws of the *English*. May he have a good harvest of it as he deserves.

From Historians let us borrow some other helps for this service.

C H A P. XXIII.

King Alfred divides England into Countyes or Shires, and into Hundreds and Tythings. The Original of Decenna or Court-leet, Friburg, and Mainpast. Forms of Law, how People were to answer for those whom they had in Borgh or Mainpast.

35. " *I*ngulph the Abbot of *Crowland*, writing of King *Alfred* says: That he was the first of all that changed the Villages or Lordships and Provinces of all *England* into *Counties* or *Shires*. Before that it was reckoned and divided according to the number of *Hides* or Plough-lands by little districts or quarters. He divided the Counties into *Hundreds* and *Tythings*; (it was long before that *Honorius*, Arch-Bishop of *Canterbury*, had parted the Country into *Parishes*; to wit, *Anno 636.*) that every Native home-born lawful man, might be in some Hundred and Tything (I mean whosoever was full twelve years of age) and if any one should be suspected of Larceny or Theft, he might in his own Hundred or Ward, being either condemned or giving security (in some Manuscripts it is being acquitted) he might either incur or avoid the deserved penalty. *William of Malmesbury* adds to this, that he that could not find security was afraid of the severity of the Laws; and if any guilty person, either before his giving security or after, should make his escape, all of that Hundred and Tything should incur the Kings fine.

Here we have the Original of *Decenna* or a *Court-leet*, of *Friburg*, and perhaps of *Mainpast*: Which things though grown out of use in the present Age; yet are very often mentioned, not only in the *Confessors Laws*, but also in *Bracton* and in other Records of our Law.

What *Decenna* was, the word it self does almost shew: And *Ingulph* makes out, that is, a *Doulin* or *Courtleet*.

Friburg or *Borgh* signifies a *Surety*; for *Fri* is all one as *free*.

He who passes his word for anothers good behaviour, or good abearing, and is become his security; is said to have such a one in his *Borgh*: Being ingaged upon this account to the Government, to answer for him if he misbehave himself. And hence it is, that our people in the Country call those that live near them, or as I may say at the next door, *Neighbours*: When yet those that would find out the reason why the people of *Liege* in the Low Countries are called *Eburones*, do understand that *Burgh*, which is the same as *Borgh*, to stand for a *Neighbour*; and this is plainly affirmed by *Pontus Heuterus*, in other Originations of the like kind.

Manupastus is the same thing as a *Family*: As if one would say, *fed by hand*. Just in the like sence *Julius Pollux*, in Greek terms a Master of a Family, *Trophimos*; that is, the feeder of it.

That the Rights of *Friburg* and *Manupast* were in use with the *English* some five or six Generations ago, is manifest. *Curio* a Priest is fined by *Edward* the third, because there had been one of his Family a Murderer. And the ancient Sheets concerning the Progress or Survey of *Kent* under *Edward* the second, do give some light this way. " *Ralph* a Milner of " *Sandon*, and *Roger* a Boy of the said *Ralph* in *Borgh* of * *Twicham*; (Cri-

Rotulus Win-toniae.

Hist. Cantua-riensis.

Canut. leg. 19.

Leg. Edw.

Confess. cap.

20.

Bract. de co-rona, l. 3. c. 10.

Pont. Heut.de vet. Belg. l. 1. c. 13.

Jul. Pollux. l. 3. c. 8.

3. *Edw. III. Itin. North. tit. Coron. 293.*

6 *Edw. 2. Itin. Cant.*

* Perhaps it should be *Tis-cham*.

tick whoever you are, I would not have you to laugh at this home-spun Dialect) "came by night to the Mill of *Harghes*, and then and there murdered *William* the Milner; and carried away his Goods and Chattels "and presently fled: It is not known whither they are gone, and the Jury mistrusts them the said *Ralph* and *Roger* concerning the death of the "aforesaid *William*; therefore let them be driven out and out-lawed. "They had no Chattels, but the aforesaid *Ralph* was in Borgh of *Simon Godwin of Twicham*, who at present has him not; and therefore lies at "mercy: And *Roger* was not in Borgh, but was of the Mainpast of *Robert* Arch-Bishop of *Canterbury* deceased; there being no *Engleshire* presented, the Verdit is, the murder upon the Hundred. The first discoverer of it and three Neighbours are since dead; and *Thomas Broks*, one "of the Neighbours, comes and is not mistrusted; and the Villages of "Wimesbugewelle and *Egestoun* did not come fully to the Coroners Inquest "and are therefore at mercy. And about the same time, *Solomon Rois* "of *Ickham* came to the House of *Alice* the Daughter of *Dennis Whenes*, "and beat her and struck her upon the Belly with a staff; so that she dyed presently. And the foresaid *Solomon* presently fled, and the Jury "mistrust him concerning the death aforesaid; therefore let him be driven out and be outlawed. He had no Chattels, nor was he in Borgh "because a Vagrant: The Verdit, the murder lies upon the Hundred. &c. And according to this form more such Instances.

*Braet. lib. 3. de
Corona c. 10.*

An. 21. Ed. 1.

But let it suffice to have hinted at these things, adding out of *Henry Bracton*; "If out of Frank-pledge an Offender be received in any Village, "the Village shall be at mercy; unless he that fled be such an one, that "he ought not to be in Leet and Frank-pledge; as Nobles, Knights, and "their Parents (their eldest Sons it is in the yearly Records of Law in Ed- "ward the first's time; and we may take in Daughters too) a Clergy- man, a Freeman, (I fear this word has crept in) and the like, according "to the custom of the Country; and in which case he, of whose Family "and Mainpast they were, shall be bound in some parts, and shall answer for them; unless the custom of the Country be otherways, that "he ought not to answer for his Mainpast, as it is in the County of "Hertford, where a man does not answer for his Mainpast for any offence, unless he return after Felony, or he receive him after the offence committed, as in the Circuit of *M. de Patesbull* in the County of Hert- "ford, in such a year of King *Henry* the fifth.

In sooth these usages do partly remain in our *Tythings* and *Hundreds*, not at all hitherto repealed or worn out of fashion.

C H A P. XXIV.

King Alfred first appointed Sheriffs. By Duns Scotus his advice; he gave Order for the breeding up of Youth in Learning. By the way, what a **Hide** of Land is. King Edgar's Law for Drinking. Prelates investiture by the Kings Ring and Staff. King Knute's Law against any English-man that shoud kill a Dane. Hence **Englescyre**. The manner of Subscribing and Sealing till Edward the Confessor's time. King Harald's Law that no Welch-man should come on this side Offa's Dike with a weapon.

36. "THE Governors of Provinces who before were styled Deputy-Lieutenants (we return to *Inglip* and King *Alfred*) He divided into two Offices; that is, into Judges, whom we now call Justices, and into Sheriffs, who do still retain the same name. Away then with *Polydore Virgil*, who fetches the first Sheriffs from the *Norman* Conqueror.

37. *John Scot Erigena* advised the King, that he would have his Subjects instructed in good Letters; and that to that end he would by his Edict take care of that which might be for the benefit of Learning. Whereupon he gave strict order to all Freemen of the whole Kingdom, who did at least possess two Hides of Land, that they should hold and keep their Children till the time of fifteen years of their Age, to learning; and should in the mean time diligently instruct them to know God.

A **Hide** of Land, that I may note it once for all, and a **Plough-Land** (that is as much Land as can be well turned up and tilled with one Plough every year) are read as synonymous terms of the same fence, in *Huntingdon*, *Matthew Paris*, *Thomas Walsingham*; and exprefly in a very old Charter of *Dunstan*. Although some take a *Hide* for an hundred Acres, and others otherwise; do thou, if thou hadst rather so do, fansie it to be as much ground as one can compafs about with a Bull-hide cut into Thongs, as Queen *Dido* did at *Carthage*: There are some who are not unwilling to have it so understood.

38. King *Edgar* like a King of good Fellows, or Master of Revels, made a Law for Drinking. "He gave order that studs or knobs of Silver or Gold (so *Milnsbury* tells us) should be fastned to the sides of their Cups or drinking Vessels, that when every one knew his mark or boundary, he should out of modesty, not either himself covet or force another to desire more than his stint. This is the only Law before the firſt Parliament under King *James*, has been made against thoſe *Swill-bowls*,

Alured. Rhivalens. ap.
Tuin. Apol.
ant. Oxon. l.
2. §. 207.

Συμποσίων ταῦτα καλέινει ἐρήμας,

Dionyſius.
Æneus.

Swabbers of drunken Feasts and lusty Rowers,
In full brimm'd Rummers that do ply their Dars.

who by their carowſes (tipling up *Nefor*'s years, as if they were celebrating the Goddess *Anna Perenna*) do at the same time drink others Healths, and mischief and ſpoil their own and the Publick.

G

39. "There

Malmesb. lib.
3. de Pontif. &
de gest. Reg. 2.

Bract. lib. 3.
de Coron. cap.
15.

Iogulphus.

Joh. Pris. de-
fens. hist. Brit.

Camdenus &
Sariburiensis.

39. "There was no choice of Prelates (these are the words of *Ingvilph* "again) that was merely free and canonical; but the Court conferred "all Dignities, as well of Bishops as of Abbots, by the Kings Ring and "Staff, according to his good pleasure. The Election or choice was in the Clergy and the Monks; but they desired him whom they had chosen, of the King. *Edmund*, in King *Ethelred*'s time, was after this manner made Bishop of the *Holy Island* on the Coast of *Northumberland*: And King *Edgar* in his Patent, which he signed to the Abby of *Glastenbury*, "retained to himself and his Heirs, the power of bestowing the Pastoral "Staff to the Brother Elect.

40. "To as many as King *Knute* retained with him in *England* (to wit, to the *Danes*; for by their hands also was the Scepter of this Kingdom managed) "it was granted, that they should have a firm peace all over; so "that if any of the *English* killed any of those men, whom the King had "brought along with him; if he could not clear himself by the Judgment "of God (that is, by *Ordeal*) to wit, by water and burning hot iron, "Justice should be done upon him: But if he run away and could not be "taken, there should be paid for him sixty six marks; and they were ga- "thered in the Village where the Party was slain, and therefore because "they had not the murderer forth coming; and if in such Village by rea- "son of their poverty, they could not be gathered, then they should "be gathered in the Hundred, to be paid into the Kings Treasure. In this manner writes *Henry Bracton*, who observes that hence the business of *Englishshire* came into fashion in the Inquests of murder.

41. "Hand-Writings (*i.e.* Patents and Grants) till *Edward the Confessor* "time, were confirmed by the Subscriptions of faithful Persons present; a thing practised too among the *Britans* in King *Arthur*'s time, as *John Price* informs us out of a very ancient Book of the Church of *Llandaff*. "Those Subscriptions were accompanied with Golden Crosses, and other "sacred Seals or like stamps.

42. "King *Harald* made a Law, that whosoever of the *Welch* should "be found with a Weapon about him without the bound which he had "set them, to wit, *Offa's dike*; he should have his Right Hand cut off "by the Kings Officers. This dike our Chorographer tells us was cut by *Offa* King of the *Mercians*, and drawn along from the mouth of the River *Dee* to the mouth of the River *Wye* for about eighty miles in length, on purpose to keep the *English* and *Welch* asunder.

C H A P. XXV.

The Royal Consorts great Priviledge of Granting. Felons Estates forfeited to the King. Estates granted by the King with three Exceptions of Expedition, Bridge, and Castle. The Ceremony of the Kings presenting a Turf at the Altar of that Church, to which he gave Land. Such a Grant of King Ethelbald comprised in old Verse.

THE Donations or Grants of the *Royal Consort*, though not by the Kings Authority, contrary to what the Priviledge of any other Wife is, were ratified also in that Age, as they were by the *Roman Law*: Which by the Patent of *Ethelswith*, Wife to *Burghred* King of the *Mer- cians*, granted to *Cuthwulf* in the year 868. hath been long since made out by Sir *Edward Coke*, Lord Chief Justice of the Common Pleas: Where also King *Ethelred's* ancient Charter proves, that the Estates of Felons (those I mean who concern themselves in Burglaries and Robberies) are forfeited to the King.

Having already mentioned those Hand-writings or Grants, which are from one hand and t'other, conveyances of Tenure (the jewel of quarrels) I have a mind, over and above what has been said, to set down also these Remarks, as being to our purpose; and taken from the *Saxons*. As for instance, that those are most frequent whereby Estates are conveyed to be held with the best and fairest right; yet most commonly these three things excepted, to wit, *Expedition*, Repairing of *Bridges*, and Building of *Castles*: And that those to whom the Grants were made, were very seldom acquitted upon this account. These three exceptions are noted by the term of a *three-knotted necessity* in an old Charter, wherein King *Cedwalla* granted to *Wilfrid* (the first Bishop of *Shelby* in *Suffex*) the Village of *Paganham* in the said County. "For though in the Grants of King *Ethelph* the Church be free (says *Ingulph*) and there be a confession of all things for the release of our Souls, and pardon of our sins "to serve God alone without Expedition, and building of Bridge, and "fortifying of Castle; to the intent that the Clergy might wholly attend Divine Service: Yet in that publick debate of Parliament, in the Reign of *Henry the third*, concerning the ancient State, Freedom, and Government of the *English Church*; and concerning the hourly exactions of the *Pope* and the *Leeches*, Jugglers and Decoys of *Rome*, that strolled up and down the Country to pick Peoples Pockets, to the great prejudice of the Common-wealth; they did indeed stand for the priviledge of the Church, and produced as Witnesses thereof the Instruments and Grants of Kings; who nevertheless were not so much inclined to countenance that liberty of the Church, but that, as *Matthew Paris* observes, "They always re-

C. de donat.
inter virum &
uxorem. l. 26.

In Epist. ad L.
6. Relat.

Anno Dom.
680.

Ingulph.

Math. Paris
hist. major.
pag. 838.

Ingulph.

"served to themselves for the publick advantage of the Kingdom, three things ; to wit, Expedition, and the repairing or making up of Bridge or Castle ; that by them they might withstand the incursions of the Enemy. And King *Ethelbald* hath this form : I grant that all the Monasteries and Churches of my Kingdom be discharged from publick Customs or Taxes, Works or Services, and Burdens or Payments or Attendances, unlesis it be the building and repairing of Castles or Bridges, which cannot be released to any one.

Ralph Holins-
hed in Ben. 7.Chart. Ar-
chiep. Cant.

I take no notice how King *Ethelred* the twelfth perhaps (but by no means the fifteenth, wherein an Historian of ours has blundered) hath signed the third year of his Reign by the term of an *Olympiad*, after the manner of the Greek computation or reckoning : As likewise I pass other things of the like kind, which are many times used and practised according to the fancy of the Clerks or Notaries. However the last words, which are the close of thele Grants and Patents, are not to be slighted. These we may see in that of *Cedwalla*, King of the *South-Saxons*, made to *Theodore* Arch-Bishop of *Canterbury*, in the year 687. thus.

See the Char-
ter of Edw.
Conf. in En-
glish Rhyme,
Camden in
Essex.

Ingulph.

"For a further confirmation of my grant, I *Cedwalla* have laid a Turf of the Land aforesaid upon the holy Altar of my Saviour : And with my own hand, being ignorant of Letters, have set down and expressed the mark or sign of the Holy Crois. Concerning *Withred* and a Turf of Land in *Kent*, *Camden* has the same thing ; And King *Ethelulph* is said to have offered his Patent, or Deed of Gift, on the Altar of the holy Apostle St. Peter.

Ingulph.

For a conclusion, I know no reason why I may not set underneath, the Verses of an old Poet, wherein he hath comprised the instrument or Grant of founding an Abby, which *Ethelbald*, King of the *Mercians*, gave to *Kenulph* Abbot of *Crowland* : Verses, I say, but such as were made without *Apollo's* consent or knowledge.

The Saint,
to whom the
Monastery
was dedica-
ted.

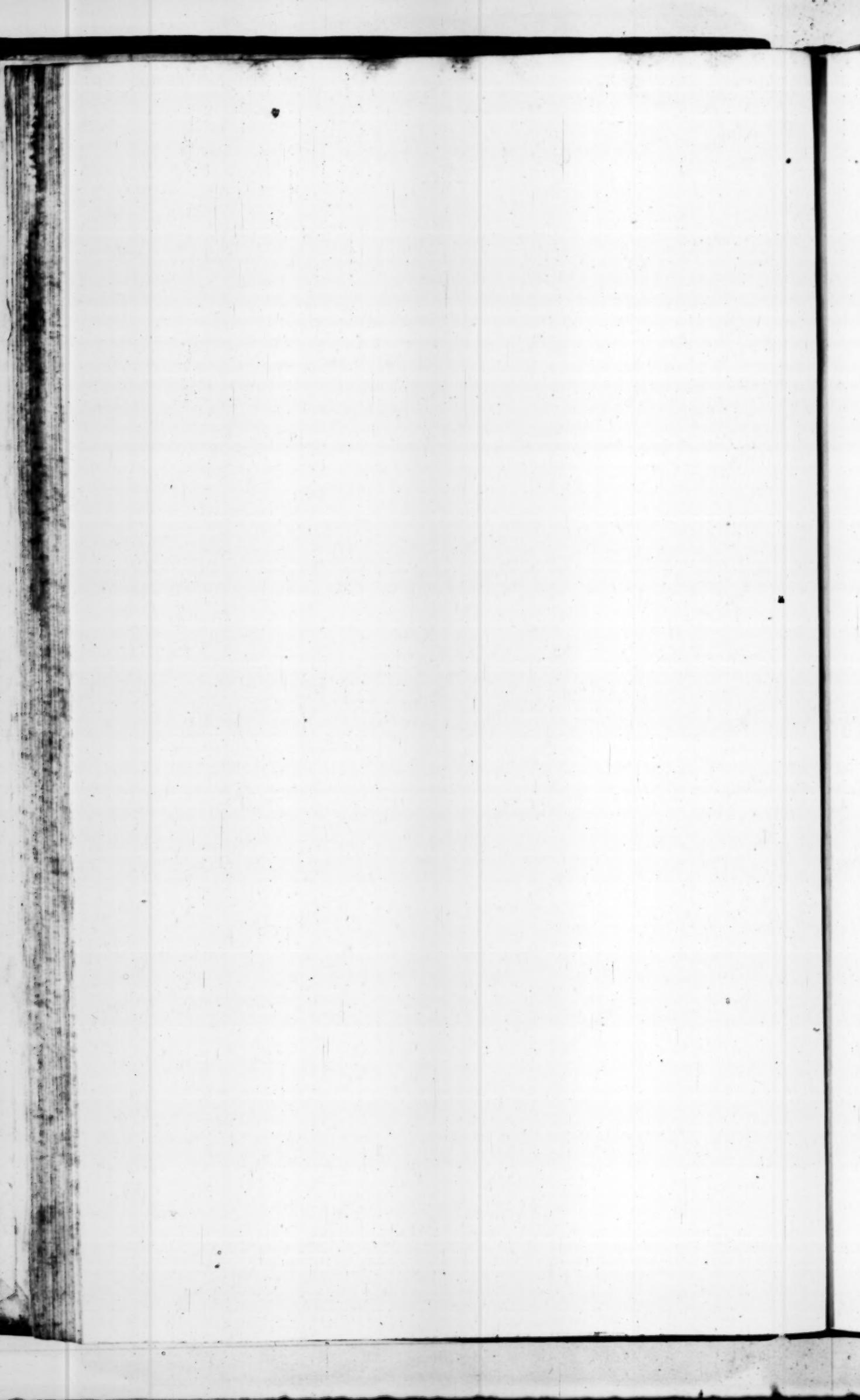
Iustum Kenulphum si quis vexaverit Anglus,
Rex condemnno mihi cuncta catella sua.
Inde meis Monachis de dannis omnibus ultra
Usque satisficiat ; carcere clausus erit.
Adfunt ante Deum testes hujus dationis
Anglorum proceres Pontificeisque mei.
*Sanctus * Guthlacus Confessor & Anachorita*
Hic jacet, in cuius auribus ista loquor.
Oret pro nobis sanctissimus iste Sacerdos,
Ad tumbam ejus haec mea dona dedi.

Which in Rhyme dogrel will run much after this hobling rate.

If any English vex this Kenulph, shall
I King condemn to me his Chattels all.
Thenceforth, until my Monks be satisfie,
For damages, in Prison he shall lye.
Witnesses of this Gift here in Gods sight
Are English Peers and Prelates of my Right.
Saint Guthlac Confessor and Anchoret,
Lies here, in whose Ears these words I speak yet.
May he pray for us that most holy Priest,
At whose Tomb these my Gifts I have addrest.

Thus they closed their Donations or Grants ; thus we our Remarks of
the *Saxons*, being now to pass to the *Normans*.

T H E





THE SECOND
B O O K
OF THE
E N G L I S H
J A N U S.

From the NORMAN Conquest, to the
Death of King Henry II.

C H A P. I.

William the Conquerour's Title. He bestows Lands upon his followers, and brings Bishops and Abbots under Military Service. An account of the old English Laws, called **Merchenlage, Dane-lage** and **Westlaxon-lage**. He is prevailed upon by the Barons, to govern according to King Edward's Laws, and at S. Albans takes his Oath so to do. Yet some new Laws were added to those old ones.



WILLIAM Duke of Normandy upon pretence of a double Right, both that of Blood (inasmuch as *Emme* the Mother of *Edward the Confessor*, was Daughter to *Richard* the first Duke of the *Normans*) and withal that of Adoption, having in Battel worsted *Harald* the Son of *Godwin* Earl of *Kent*, obtain'd a large Inheritance, and took possession of the Royal Government over all *England*.

* After his Inauguration he liberally bestowed the Lands and Estates
* of

' of the *Engliss* upon his fellow-soldiers ; that little which remained (so
' faith *Matthew Paris*) he put under the yoke of a perpetual servitude.
Upon which account, some while since the coming in of the *Normans*,
there was not in *England* except the King himself, any one, who held
Land by right of *Free-hold* (as they term it :) since in sooth one may
well call all others to a man only Lords in trust of what they had; as those
who by swearing fealty, and doing homage, did perpetually own and ac-
knowledge a Superior Lord, of whom they held, and by whom they
were invested into their Estates.

' All Bishopricks and Abbacies, which held Baronies, and so far
' forth had freedom from all Secular service (the fore-cited *Matthew* is
' my Author) he brought them under Military service, enrolling every
' Bishoprick and Abbacy according to his own pleasure, how many Soul-
' diers he would have each of them find him and his Successors in time
' of Hostility or War.

Gerv. Tilb.
de scac.
cap. 32.

Having thus according to this model ordered the *Agrarian* Law for
the division and settlement of Lands, ' he resolved to govern his Sub-
' jects (we have it from *Gervase of Tilbury*) by Laws and Ordinances
' in writing : to which purpose he proposed also the *Engliss* Laws ac-
cording to their Tripartite or threefold distinction ; that is to say, *Mer-*
chenlage, *Danlage* and *Westsaxenlage*.

Merchenlage, that is, the Law of the *Mercians* ; which was in force
in the Counties of *Glocester*, *Worcester*, *Hereford*, *Warwick*, *Oxford*, *Che-*
ster, *Salop* and *Stafford*.

Danlage, that is, the Law of the *Danes* ; which bore sway in *Tork-*
shire, *Derby*, *Nottingham*, *Leicester*, *Lincoln*, *Northampton*, *Bedford*,
Buckingham, *Hertford*, *Effex*, *Middlesex*, *Norfolk*, *Suffolk*, *Cambridge*,
Huntingdon.

Westsarenlage, that is, the Law of the *West-Saxons* ; to which all
the rest of the thirty two Counties (which are all that *Malmesbury*
reckons up in *Ethelred's* time) did belong ; to wit, *Kent*, *Sussex*, *Surrey*,
Berks, *Southampton*, *Winton*, *Somerset*, *Dorset* and *Devon*.

' Some of these *Engliss* Laws he disliked and laid aside ; others he ap-
' proved of, and added to them, some from beyond Sea out of *Neustria* (he
means *Normandy*, which they did of old, term *Neustria* corruptly, in-
stead of *Westrich*, as being the more Western Kingdom of the *Franks*,
and given by *Charles the Simple* to *Rollo* for his Daughter *Gilla* her portion)
' such of them as seemed most effectual for the preserving of the
' Kingdoms peace. This saith he of *Tilbury*.

Now this is no rare thing among Writers for them to devise, that *Wil-*
liam the Conqueror brought in as it were a clear new face of Laws to all
intents and purposes. ' Tis true, this must be acknowledg'd, that he
did make some new ones (part whereof you may see in *Lambard's Ar-*
chaeonomia, and part of them here subjoined) but so however that they
take their denomination from the *Engliss*, rather than from the *Nor-*
mans ; although one may truly say, according to what Lawyers dispute,
that the *Engliss* Empire and Government was overthrown by him. That
he did more especially affect the Laws of the *Danes* (which were not
much unlike to those of the *Norwegians*, to whom *William* was by his
Grand-father allied in blood) I read in the Annals of *Roger Hoveden*.
And that he openly declared, that he would rule by them ; ' at hearing
' of which, all the great men of the Countrey, who had enacted the
' *Engliss* Laws, were presently struck into dumps, and did unanimously
' petition

petition him, That he would permit them to have their own Laws and ancient Customs; in which their Fathers had lived, and they themselves had been born and bred up in ; forasmuch as it would be very hard for them to take up Laws that they knew not, and to give judgement according to them. But the King appearing unwilling and uneasie to be moved, they at length prosecuted their purpose, beseeching him, that for the Soul of King *Edward*, who had after his death given up the Crown and Kingdom to him, and whose the Laws were, and not any others that were strangers, he would hearken to them and grant that they might continue under their own Countrey Laws. Whereupon calling a Council, he did at the last yield to the request of the Barons. From that day forward therefore the Laws of King *Edward*, which had before been made and appointed by his Grand-father *Edgar*, seeing their authority, were before the rest of the Laws of the Country respected, confirmed and observed all over *England*. But what then? Doth it follow that all things in *William's* time were new? How can a man chuse but believe it? The Abbot of *Crookland* sayes this of it, I have brought with me from *London* into my Monastery the Laws of the most Righteous King *Edward*, which my Renowned Lord King *William* hath by Proclamation ordered, under most grievous penalties, to be authentick and perpetual, to be kept inviolably throughout the whole Kingdom of *England*, and hath recommended them to his Justices, in the same language wherein they were at first set forth and published. And in the Life of *Fretherick* Abbot of *S. Albans* you have this account : After many debates, Arch-Bishop *Lanfrank* being then present (at *Berkhamstead* in *Hertfordshire*) the King did for the good of peace, take his Oath upon all the Reliques of the Church of *S. Albion*, and by touching the holy Gospels, *Fretherick* the Abbot administering the Oath, that he would inviolably observe the good and approved ancient Laws of the Kingdom, which the holy and pious Kings of *England* his Predecessors, and especially King *Edward* had appointed.

Camden.

Guit. le
Rouille
Alençon.

But you will much more wonder at that passage of *William le Rouille* of *Alençon* in his Preface to the *Norman Customs*. That vulgar Chronicle, saith he, which is intitled the *Chronicle of Chronicles*, bears witness, that S. *Edward* King of *England*, was the Maker or Founder of this Custom; where he speaks of *William* the Bastard Duke of *Normandy*, alias King of *England*, saying, that whereas the forefaid S. *Edward* had no Heirs of his own Body, he made *William* Heir of the Kingdom, who after the Defeat and Death of *Harald* the Usurper of the Kingdom, did freely obtain and enjoy the Kingdom upon this condition, to wit, that he should keep the Laws which had before been made by the fore-mentioned *Edward*; which *Edward* truly had also given Laws to the *Normans*, as having been a long time also brought up himself in *Normandy*.

Where then, I pray you, is the making of new Laws? Why! without doubt, according to *Tilbury*, we are to think, that together with the ratifying of old Laws, there was mingled the making of some new ones; and in this case one may say truly with the Poet in his Panegyrick:

Claudian. in
4. cons. Ho-
norii.

*Firmatur senium Juris, priscamque resumunt
Canitiem leges, emendanturque vetusta,
Acceduntque novae. —*

which in *English* speaks to this sense;

The Laws old age stands firm by Royal care,
Statutes resume their ancient gray hair.
Old ones are mended with a fresh repair;
And so supply some new ones added are.

See here! we impart unto thee, Reader, these new Laws, with other
things, which thou maist justly look for at my hands in this place.

C H A P.

C H A P. II.

The whole Country inrolled in Dooms-day Book. Why that Book so called. Robert of Gloucester's Verses to prove it. The Original of Charters and Seals from the Normans, practised of old among the French. Who among the Romans had the privilege of using Rings to seal with, and who not.

1. ‘**H**ecaused all *England* to be described, and inrolled (a whole company of Monks are of equal authority in this busines, but we make use of *Florentius of Worcester* for our witness at this time) ‘how much Land every one of his Barons was possessed of, how many ‘Soldiers in fee, how many Ploughs, how many Villains, how many ‘living Creatures or Cattel, I, and how much ready mony every one ‘was Master of throughout all his Kingdom, from the greatest to the ‘least; and how much Revenue or Rent every Possession or Estate was ‘able to yield.

Dooms-
day.

That breviary or *Present State* of the Kingdom being lodged in the Archives ‘for the generality of it, containing intirely all the Tenements ‘or Tenures of the whole Country or Land was called **Dooms-day**, as if one would say, *The day of Doom* or Judgment. ‘For this reason, saith ‘he of *Tilbury*, we call the same *Dooms-day Book*: Not that there is in it ‘sentence given concerning any doubtful cases proposed; but because it ‘is not lawful upon any account, to depart from the *Doom* or Judgment ‘aforesaid.

Reader, If it will not make thy nice Stomach wamble, let me bring in here an old fashioned Rhyme, which will hardly go down with our dainty finical Verse-wrights, of an historical Poet *Robert of Gloucester*: One whom, for his Antiquity, I must not slight concerning this Book.

The K. W. vox to wite the worth of his londe
 Let enqueri streitliche thoru al Engelonde,
 Hou moni plou lond, and hou moni hiden also
 Were in eberich fire, and wat hii were wurtb yeroeto:
 And the rents of each toun, and of the waters ethone,
 That wurtb, vnd of woods eke, that there ne biseved none,
 But that he wist wat hii were wurtb of al Engelonde,
 And wite al clene that wurtb thereof ich understand
 And let it write clene inou, and that scrit dude iwis
 In the Tresorie at Westminster there it put is.
 So that vre Kings luth, when hii ransome toke
 And redy war folc might give, hii sond there in yor boke.

Considering how the *Englyss* Language is every day more and more refined, this is but a rude piece, and looks scurvily enough. But yet let us not be unmindful neither, that even the fine trim artifices of our quaint Masters of Expression, will themselves perhaps one day, in future Ages, that shall be more critical, run the same risk of censure, and undergo the like misfortune: And that,

Horat. art.
poetic.

*Multa renascentur que nunc cecidere, cadentque
Que nunc sunt in honore;* —

As Horace the Poet born at *Venusium*, tells us: That is,

224

Several words which now are fal'n full low,
Shall up again to place of Honour start;
And words that now in great esteem, I trow,
Are held, shall shortly with their honour part.

2. 'The Normans called their Writings given under their hand, Charters (I speak this out of *Ingulph*) and they ordered the confirmation of such Charters with an impression of Wax, by every ones particular Seal, under the Testimony and Subscription of three or four Witnesses standing by.

But *Edward the Confessor* had also his Seal, though that too from Normandy. For in his time, as the same Writer saith, 'Many of the English began to let slip and lay aside the English Fashions, bringing in those of the Normans in their stead, and in many things to follow the customs of the Franks; all great persons to speak the French Tongue in their Courts, looking upon it as a great piece of gentility, to make their Charters and Writings ala mode of France; and to be ashamed of their own Country usages in these and other like cases. Nay, and if Leland, an Eye-witness, may be believed, our great Prince *Arthur* had his Seal also, which he saith he saw in the Church of *Westminster* with this very inscription.

Leland.

P A T R I T I U S . A R T H U R I U S . B R I T A N N I A E .
G A L L I A E . G E R M A N I A E . D A C I A E . I M P E R A T O R .

That is,

The Right Noble, A R T H U R, Emperor of Britanny, France, Germany, and Transylvania.

March. Cantu.
in Antiq. Eccl. Britan.

Tuin. apol. ant.
Oxon. lib. 1.
§. 81.

But that the Saxons had this from the Normans, is a thing out of all question. Their Grants or Letters Patents signed with Crosses, and subscribed with Witnesses names, do give an undoubted credit and assurance to what I have said. *John Ro/s* informs us that *Henry Beauclerk* was the first that made use of one of Wax; and *Matthew of Canterbury*, that *Edward* the first did first hang it at the bottom of his Royal Writings by way of Label; whereas before, his Predecessors fastned it to the left side. Such a writing of *Henry* the first in favour of *Anselm*, the last Author makes mention of; and such an one of *William*'s Duke of the Normans, though a very short one and very small written; *Brinn Twine* in his *Apology for the Antiquity* of the famous University of Oxford (the great Study and support of *England*, and my ever highly honoured Mother) saith, he had seen in the Library of the Right Honourable my Lord *Lumley*.

But let a circumcised *Jer*, or who else will for me, believe that story concerning the first Seal of Wax, and the first fastning of it to the Writing; A great many waxen ones of the French Peers (that I may say something of those in wax) and Golden ones of their Kings (to wit, betwixt

twixt the years 600 and 700) we meet with fashioned like Scutcheons or Coats of Arms in those Patterns or Copies which *Francis de Rosieres* has in his first Tome of the Pedigree or Blazonry of the Dukes of *Lorraine*, set down by way of Preface. Nor was it possible that the *Normans* should not have that in use, which had been so anciently practised by the French. Let me add this out of the ancient Register of *Abendon*: ‘That Richard Earl of *Chester* (who flourished in the time of *Henry the first*) ordered to sign a certain Writing with the Seal of his Mother *Ermentrude*; seeing that (being not girt with a Soldiers Belt, i. e. not yet made Knight) all sorts of Letters directed by him, were inclosed with his Mothers Seal.

How? what is that I hear? Had the Knightly dignity and Order the singular priviledge, as it was once at *Rome*, to wear Gold-Rings? For Rings (as ’tis related out of *Ateius Capito*) were especially designed and engraven for Seals: Let *Phæbus*, who knows all things, out of his Oracle tell us. For Servants or Slaves (so says *Justus Lipsius*, and remarks it from those that had been dug up in *Holland*) and common Soldiers were allowed iron ones to sign or to seal with (which therefore *Flavius Vopiscus* calls *annulos scillaricos*, i. e. seal-Rings) and so your ordinary Masters of Families had such, with a Key hanging at it to seal and lock up their provision and utensils. ‘But, faith *Ateius* of the ancient time, Neither was it lawful to have more than one Ring, nor for any one to have one neither but for Freemen, whom alone trust might become, which is preserved under Seal; and therefore the Servants of a Family had not the Right and Priviledge of Rings. I come home to our selves now.

Camden in
Ord. Angl.

Macrobi. S4:
turn. lib. 7.
cap. 13.

Vopisc. in
Aurel.

Lipf. ad 2.
Annal. Tacit.
num. 4.

C H A P. III.

Other ways of granting and conveying Estates, by a Sword, &c. particularly by a Horn. Godwin's trick to get Boleham of the Arch-Bishop of Canterbury. Pleadings in French. The French Language and Hand when came in fashion. Coverfeu. Laws against taking of Deer, against Murder, against Rape.

Inglipph.
3. *A*t first many Lands and Estates were collated or bestowed by a bare word of mouth, without Writing or Charter, only with the Lords Sword or Helmet, or a Horn or a Cup; and very many Tenements with a Spur, with a Currycomb, with a Bow, and some with an Arrow: But these things were in the beginning of the Norman Reign, in after times this fashion was altered, says *Inglipph.*

Malmbs. lib. 2. cap. 8.
A. Ch. 980.

I, and these things were before the Normans Government. Let King *Edgar* his Staff cut in the middle, and given to *Glastenbury Abbey* for a testimony of his Grant, be also here for a testimony. And our Antiquary has it of *Pusey* in *Berkshire*, 'That those who go by the name of *Pusey* do still hold by a Horn, which heretofore had been bestowed upon their Ancestors by *Knute the Danish King*. In like manner, to the same purpose an old Book tells this story: 'That one *Ulphus* the Son of *Toraldus*, turned aside into *Tork*, and filled the Horn that he was used to drink out of, with Wine; and before the Altar upon his bended knees, drinking it, gave away to God and to St. Peter, the Prince of the Apostles, all his Lands and Revenues. Which Horn of his, saith *Camden*, we have been told was kept or reserved down to our Fathers memory. We may see the conveyance of Estate, how easie it was in those days, and clear from the punctilio's of Law, and withal how free from the captious malice of those petty foggers who would intangle Titles and find flaws in them, and from the swelling Bundles and Rolls of Parchments now in use.

Guil. Mapzus. Camden.
Lib. secund. 2. tit. 2.

But commend me to *Godwin Earl of Kent*, who was, to use *Hegesander's* word, too great a Συλλαβοτονιαζήτης, catcher at Syllables, and as the Comedian says, more shifting than a Potters wheel: 'Give me (saith he to the Arch-Bishop of Canterbury) *Boleham*. The Arch-Bishop admiring what it was he would be at in that question, saith, I give you *Boleham*. He straight upon the confidence of this deceit, without any more ado entred upon an Estate of the Arch Bishops of that name on the Sea-coasts of *Suffolk*, as if it had been his own by Inheritance: And with the testimony of his people about him, spoke of the Arch-Bishop before the King as the donor of it, and quietly enjoyed it. Those things I spoke of before (to wit, of sword, Horn, &c.) smell of that way of investing into Fees which we meet with in *Obertus de Orto*; but are very unlike to that solemn ceremony which is from ancient time even still used in conveying of an Estate and delivering possession, wherein a green Turf or the bough of a growing Tree is required.

4. 'They did so much abhor the English tongue ('tis the Abbot of *Crowland* saith it) 'that the Laws of the Land, and the Statutes of the English Kings, were handled or pleaded in the French language. For till the thirty sixth year of *Edward the third*, all busineses of Law were pleaded

'pleaded in *French*. That also in Schools the Rudiments of Grammatical Institution, were delivered to Boys in *French* and not in *English*. Also that the *English* way and manner of Writing was laid aside, and the *French* mode was made use of in all Charters or Instruments and Books.

Indeed it was such a fault to be ignorant in the *French*, or not to be able to speak it; that mainly upon this account, in the Reign of *William Rufus*, *Ulfstan* Bishop of *Worcester* was censured as unworthy of his place, and deprived of his dignity, who as to other things according to the simplicity of that Age, was Scholar enough. The Abbot whom I quoted, speaks thus of the *French* Character: 'The *Saxon* hand was used by all the *Saxons* and *Mercians* in all their hand-writings, till the time of King *Alfred*, who had by *French* Tutors been very well trained up in all Literature; but from the time of the said King, it did by disuse come to be of little account; and the *French* hand, because it being more legible and more delightful to sight, had the preheminence, grew more and more every day in vogue and use among all the *English*. Nevertheless however this busines went, we are told that in the memory of our Fathers, and that by an ancient order, there were Lectures of the *English-Saxon* language, read at *Tavistock* Abby in *Devonshire*.

Matt. Paris.

5. That his new Kingdom might not be disturbed by Riots and disorders in the night, he ordered that at the Ringing of a Bell (which they called the *Curfew*-Bell) all the Lights and Fires should in every little Cottage, a little after the dusk of the Evening, be put out.

Polydorus.
Curfew.

6. 'He that should take a Deer, or *aprum*, a Boar (so says *Huntingdon*, but perhaps 'tis *caprum*, a Buck) or a Roe, was to have his eyes thrust or plucked out, faith *Matthew Paris*.

7. 'If any one had slain any one ('tis *Huntingdon* writes this) be it upon what cause or occasion foever, he was sentenced to a Capital punishment, he was to die for it.

8. 'If one had forced any woman (so I read *aliquam* any woman, not *aliquem* any man, as 'tis in the common Prints) he was to have his Privities cut off. Forced her? I, sure enough; and perhaps he that lay with a woman with her consent, was notwithstanding that, served in the same kind too. And in this case I would have you hear what that great Lawyer *Albericus Gentilis*, his opinion is. 'This I say, faith he, that a man hath a greater injury done him, if the woman were not ravished per force, but were debauched and made willing: because in this case her mind is estranged from her Husband; but in that other, not.

Alberic. Gen-
til. de jure
bell. lib. I. c.
20.

C H A P. I V.

Sheriffs and Juries were before this time. Tha four Terms. Judges to Act without Appeal. Justices of Peace. The Kingr payments made at first in Provisions. Afterwards changed into Money, which the Sheriff of each County was to pay in to the Exchequer. The Constable of Dover and Warden of the Cinque Ports why made. A disorder in Church-affairs Reformed.

August. de
Civ. Dei. l. 18.
c. 10.
Paulan. Atti-
cis.

Polydore Virgil brings in at this time the first *Sheriffs* of Counties, and here places the beginning of *Juries*, or determining of Tryals by the judgment of Twelve; but is out in them both. This of *Juries* is convinced by a Law of Ethelred in *Lambard's* explications of Law-terms, and by those irrefragable arguments which the famous Sir *Edward Coke* brings against it. That other mistake of *Sheriffs* is confuted by what we have formerly noted out of *Ingulph*, and by what we shall hereafter somewhere have occasion to remark. *Mars* being impleaded in the *Areopagus*, the place of Judgment at *Athens*, for the murder of *Halirothius* the Son of *Neptune*, whom he had slain for Ravishing his Daughter *Alcippe*; upon his Tryal by twelve Gods, was acquitted by six Sentences or Votes: For if the number were equal and no majority, the Person was not condemned but discharged. My meaning why I put in this Story, is to shew the most ancient use of this number of twelve in Tryals elsewhere, as well as amongst us. An *Italian* might well mistake in a concern of *England*; yet take it not ill at my hands, that I have given you this upon his credit.

Terms.

9. 'He appointed that four times every year, there should be kept Conventions or Meetings for several days, in such place as he himself should give order: In which Meetings the Judges sitting apart by themselves, should keep Court and do Justice. These are our four **Terms**.

10. 'He appointed other *Judges*, who without appeal should exercise Jurisdiction and Judgment; from whom as from the bosom of the Prince, all that were ingaged in quarrels, addressing thither, might have right done them, and refer their controversies to them.

**Justices of
Peace.**

11. 'He appointed other Rulers or Magistrates, who might take care to see misdemeanors punished; thele he called *Justices of Peace*. Now one may well imagine, that this name of Office is most certainly of a later date, and a foreign Writer is to be excused by those rights which are afforded to Guests and Strangers (since acting a *Busiris* his part against them, would be downright barbarous) I say he is to be excused so far, as not to have his mistakes in the History of the *English* Nation, too heavily charged upon him.

12. 'In the Primitive State of the Kingdom after the Conquest (*Gervase of Tilbury* in his Dialogue of the Exchequer, saith, this is a thing handled down from our Forefathers) 'the Kings had payments made them

'them out of their Lands, not in sums of Gold or Silver, but only in Victuals or Provisions: Out of which the Kings house was supplied with necessaries for daily use; and they who were deputed to this service (the Purveyors) knew what quantity arose from each several land. But yet as to Soldiers pay or donatives, and for other necessaries concerning the Pleas of the Kingdom, or Conventions, as also from Cities and Castles where they did not exercise Husbandry or Tillage; in such instances, payments were made in ready mony. Wherefore this Institution lasted all the time of *William* the First, to the time of King *Henry* his Son, so that I my self (*Gervase* flourished in the Reign of *Henry*, the second) have seen some people, who did at set times carry from the Kings Lands, victuals or provisions of food to Court. And the Officers also of the Kings house knew very well, having it upon account, which Counties were to send in Wheat, which to send in several sorts of flesh, and Provender for the Horses. These things being paid according to the appointed manner and proportion of every thing, the Kings Officers reckoned to the *Sheriffs* by reducing it into a sum of pence; to wit, for a measure of Wheat to make bread for a hundred men, one shilling; for the body of a pasture-fed Beef, one shilling; for a Ram or a Sheep four pence; for the allowance of twenty horses likewise four pence: But in proces of time, when as the said King was busie in remote parts beyond Sea to appease Tumults and Insurrections; it so happened, that ready mony was highly necessary for him to supply his occasions. In the mean time, there came in multitudes, a great company of Husbandmen with complaints to the Kings Court, or which troubled him more, they frequently came in his way as he was passing by, holding up their Ploughshares, in token that their Husbandry was running to decay; for they were put to a world of trouble, upon occasion of the provisions which they carried from their own quarters through several parts of the Kingdom. Thereupon the King being moved with their complaints, did by the resolved advice of his Lords, appoint throughout the Kingdom such persons, as he knew were, for their prudence and discretion, fit for the service. These persons going about, and that they might believe their own eyes, taking a view of the several Lands, having made an estimate of the provisions which were paid out of them, they reduced it into a sum of pence. But for the total sum, which arose out of all the Lands in one County, they ordered, that the *Sheriff* of that County should be bound to the Exchequer: Adding this withal, that he should pay it at the *Scale*. Now the manner of paying, the tryal of the weight and of the metal by Chemical operation, the Melter or Coyner, and the surveyor of the Mint, are more largely handled and explained by my self in some other work of mine.

13. That he might the more firmly retain *Kent* to himself, that being accounted as it were the *Key of England*; ('tis the famous Mr. *Cambden* tells the Story) he set a Constable over *Dover-Castle*, and made the same person *Warden of the Cinque Ports*, according to the old usage of the *Romans*. Those are *Paslings*, *Dover*, *Hith*, *Rumney*, and *Sandwith*; to which are joyned *Winchelsea* and *Rye* as Principals, and other little Towns as Members.

14. To put the last hand to *William*, I add out of the Archives, this Law, not to be accounted among the last or least of his.

A. M. 66. In
Ebor. chart. 2
Rich. 2. pro-
decan. & ca-
pit. Eccles.
Lincoln.

William, by the Grace of God, King of the English, to all Counts or Earls,
Viscounts or Sheriffs, and to all French born, and English men, who have
Lands in the Bishoprick of Remigius, greeting.

This *Remigius* was the first who translated the Episcopal See from
Dorchester to Lincoln.

Leg. Edgar.
cap. 5.

'Be it known unto you all, and the rest of my Liege Subjects, who
'abide in *England*; that I, by the common advice of my Arch-Bishops,
'and the rest of the Bishops and Abbots, and all the Princes of my King-
'dom, have thought fit to order the amendment of the Episcopal Laws,
'which have been down to my time, in the Kingdom of the Angles,
'not well, nor according to the Precepts of the holy Canons, ordained
'or administred: Wherefore I do command, and by my Royal Autho-
'rity strictly charge; that no Bishop or Arch-deacon, do henceforth
'hold Pleas in the Hundred concerning Episcopal Laws; nor bring any
'cause which belongs to the Government of Souls (*i.e.* to spiritual affairs)
'to the judgment of secular men; but that whosoever, according to the
'Episcopal Laws, shall for what cause or fault soever be summoned, shall
'come to a place which the Bishop shall chuse and name for this purpose;
'and there make answer concerning his cause, and do right to God and
'his Bishop, not according to the Hundred, but according to the Canons
'and Episcopal Laws. For in the time of the *Saxon Empire*, there were
wont to be present at those Country Meetings (the *Hundred Courts*) an
Alderman and a *Bishop*, the one for *Spirituals*, the other for *Temporals*,
as appears by King *Edgar's Laws*.

C H A P.

C H A P. V.

William Rufus succeeds. Annats now paid to the King. Why claimed by the Pope. No one to go out of the Land without leave. Hunting of Deer made Felony.

After the death of *William*, his second Son *WILLIAM* sir named *RUFUS* succeeded in his room. All Justice of Laws (as *Florentius of Worcester* tells us) ‘was now hush't in silence, and ‘Causles being put under a Vacation without hearing, money alone bore ‘sway among the great ones,

Ipsaque majestas auro corrupta jacebat.

Petron. Arbic.

that is,

And Majesty it self being brib'd with gold,
Lay, as a prostitute, expos'd to th' bold.

15. The right or duty of *First-Fruits*, or, as they are commonly called, the *Annats*, which our Kings claimed from vacant Abbeys and Bishopricks, *Polydor Virgil* will have to have had its first original from *Rufus*. Now the Popes of *Rome* laid claim to them anciently; a sort of Tribute, which upon what right it was grounded, the Council of *Basil* will inform us, and by what opinion and resolution of Divines and Lawyers confirmed, *Francis Duarenus* in his Sacred Offices of the Church will instruct us. ’Tis certain, that Chronologers make mention, that at his death the Bishopricks of *Canterbury*, *Winchester* and *Salisbury*, and twelve Monasteries beside, being without Prelates and Abbots, paid in their Revenues to the Exchequer.

Basil. concil.
scil. 21.
Duaren. de
Benef. L6.c.3.
Vid. Platin.
in Joh. 22.
vita.

16. ‘He forbade by publick Edict or Proclamation (says the same Author) ‘that any one should go out of *England* without his leave and ‘Passport. We read, that he forbade *Anselm* the Arch-Bishop, that he should not go to wait upon Pope *Urban*; but that he comprehended all Subjects whatsoever in this his Royal order, I confess I have not met with any where in my reading, but in *Polydor*.

17. ‘He did so severely forbid hunting of Deer (saith *William of Malmesbury*) ‘that it was Felony, and a hanging matter to have taken a Stag or Buck.

C H A P. VI.

*Henry the First why called Beauclerk. His Letters of Repeal. An Order for the Relief of Lands. What a **Hercot** was. Of the Marriage of the Kings Homagers Daughter, &c. Of an Orphans Marriage. Of the Widows Dowry. Of other Homagers the like. Coinnage-money remitted. Of the disposal of Estates. The Goods of those that dye Intestate, now and long since, in the Churches Jurisdiction; as also the business of Wills. Of Forfeitures. Of Misdemeanors. Of Forests. Of the **Fee de Hanberk**. King Edward's Law restored.*

William, who had by direful Fates been shewn to the World, was followed by his Brother Henry, who for his singular Learning, which was to him instead of a Royal Name, was called Beau-clerk. He took care of the Common-wealth, by amending and making good what had slipt far aside from the bounds of Justice, and by softning with wholesome remedies those new unheard of, and most grievous injuries, which Ralph afterwards Bishop of Durham (being Lord Chief Justice of the whole Kingdom) plagued the people with. He sends Letters of Repeal to the High Sheriffs, to the intent, that the Citizens and people might enjoy their liberty and free rights again. See here a Copy of them, as they are set down in Matthew Paris.

H E N R Y by the Grace of God King of England, to Hugh of Bock-land, High Sheriff, and to all his Liege people, as well French as English in Herefordshire, Greeting. Know ye, that I through the mercy of God, and by the common advice of the Barons of the Kingdom of England have been crowned King. And because the Kingdom was opprest with unjust exactions, I out of regard to God, and that love which I bear towards you all, do make the holy Church of God free, so that I will neither sell it, nor will I put it to farm, nor upon the death of Arch-Bisshop, or Bisshop, or Abbot, will I take any thing of the domain of the Church, or of the men thereof, till a Successor enter upon it. And all evil Customs, wherewith the Kingdom of England was unjustly oppressed, I do henceforward take away; which evil usages I do here in part set down.

18. 'If any one of my Barons, Counts or others that hold of me, shall dye, his Heir shall not redeem his Land, as he was wont to do in the time of my Father, but relieve it with a lawful and due relief. In like manner also shall the Homagers or Tenants of my Barons relieve their Lands from their Lords with a lawful and just relief. It appears, that in the times of the Saxons a **Hercot** was paid to the Lord at a Tenants death, upon the account of provision for War (for **here** in Saxon signifies an Army:) and that which in our memory now in French is called a **Relief** (Henry of Bracton sayes, 'tis an engagement to recognize the Lord) doth bear a resemblance of the ancient **Hereot**. Thereupon it is a guess, faith William Lambard, that the Normans being Conquerours,

Canut. leg.
cap. 69. &
Ed. Confess.
Bracton. lib. 2.
cap. 35.
'Eicd ex*dicto*
in Novell.
Lev. 13. Ho-
toman. in ver-
bo Feudal.
Relev.

'Conquerors, did remit the *Heret* to the *Angles* whom they had con-
 'quered and stripped of all kind of Armour, and that for it they ex-
 'acted money of the poor wretches. To this agrees that which is men-
 tioned in the State of *England* concerning the Nobles of *Berkshire*. A
 'Tain or Knight of the Kings holding of him, did at his death for a
 'Relief part with all his Arms to the King, and one Horse with a Saddle
 'and another without a Saddle. And if he had Hounds or Hawks, they
 'were presented to the King, that if he pleased he might take them. And
 'in an ancient Sanction of *Conrade* the First, Emperour of *Germany*, If a
 'Souldier that is Tenant or Lessee happen to dye, let his Heir have the
 'Fee, so that he observe the use of the greater *Vavasors*, in giving his
 'Horses and Arms to the Seniors or Lords. *John Mariana* takes notice,
 that the word *Sensors* in the Vular Languages, *Spanish*, *Italian* and
French, signifies *Lords*, and that to have been in use from the time of
Charlemain's Reign. But these things you may have in more plenty from
the *Feudists*, those who write concerning Tenures.

Carol. Sigon.
de reg. Ital.
lib. 8.
V. Hotom.
comm. ad 3.
lib. Feud.
Mariana hist.
Hispan. lib. 5.
cap. II.

19. 'If any of my Barons or other men (Homagers or Tenants) of
'mine (I return to King *Henry's Charter*) shall have a mind to give
'his Daughter, or Sister, or Niece, or Kinswoman in marriage, let him
'speak with me about it. But neither will I take any thing of his for
'this leave and licence, nor will I hinder him from betrothing her, ex-
'cept he shall have a design of giving her to an enemy of mine.

20. 'If upon the death of a Baron, or any other Homager of mine,
'there be left a Daughter that is an Heiress, I will bestow her with the
'advice of my Barons together with her Land.

21. 'If upon the death of the Husband, his Wife be left without Chil-
'dren, she shall have her Dowry and right of Marriage, as long as she
'shall keep her body according to Law; and I will not bestow her, but
'according to her own liking. And if there be Children, either the
'Wife, or some one else near of kin shall be their Guardian and
'Trustee of their Land, who ought to be just.

22. 'I give order, that my Homagers do in like manner regulate
'them selves towards the Sons and Daughters and Wives of their
'Homagers.

23. 'The common Duty of Money or Coinage, which was taken
'through all Cities and Counties, which was not in the time of King
Edward, I do utterly forbid that henceforward this be no more done.

24. 'If any one of my Barons or Homagers shall be sick and weak,
'according as he himself shall give or order any one to give his money,
'I grant it so to be given; but if he himself being prevented either by
'Arms or by Sicknes, hath neither given his money, nor disposed of it
'to give, then let his Wife, or Children, or Parents, and his lawful
'Homagers for his souls health divide it, as to them shall seem best.
And in *Canutus* his Laws, 'Let the Lord or Owner at his own discretion
'make a just distribution of what he hath to his Wife and Children and
'the next of kin. But at this time, and long since, Church men have
been as it were the Distributors and Awarders of the Goods of such per-
sons

Canut. cap. 63

sions as dye Intestate, or without making their Wills, and every Bishop as Ordinary in his own Dioces, is the chief Judge in these cases.

^{2 Rich. 3. tit.} ^{Testament. 4.} John Stratford Arch-Bishop of Canterbury faith it, and it is averred in the Records of our Law, that this Jurisdiction also concerning Wills, was of old long time ago in an ancient Constitution, intrusted to the Church by the consent of the King and Peers. However, in what Kings time this was done, neither does he relate, nor do I any where

Lind provin.
constit. de te-
flam. c. Statu-
tum & de im-
mun. Eccles.
c. Accidit,
verb. Abolim.
Glanvil. l. 7.
c. 8.
C. de testam.
L Consulta di-
valia.

find, as *William Lindwood* in his Provincial acknowledgeth. It is a thing very well known, that after Tryal of right, *Wills* were wont to be opened in the Ecclesiastical Court even in the Reign of *Henry the Second* (*Ralph Glanvill* is my witnes) contrary to what order was taken in the Imperial Decrees of the *Romans*. And peradventure it will appear so to have been before *Glanvill*, as he will tell you, if you go to him; although you have, quoted by my self some where, a Royal Rescript or Order to a High Sheriff, ‘That he do justly and without delay cause to stand (*i. e.* appoint and confirm) a reasonable share to such an one; that is, that the Legatee may obtain and enjoy his right, what was bequested to him by the Sheriffs help. I come back now to my track again.

25. ‘If any one of my Barons or Homagers shall make a forfeit, he shall not give a pawn in the scarcity of his money, as he did in the time of my Brother or my Father, but according to the quality of his forfeiture: nor shall he make amends, as he would have done heretofore in my Brothers or Fathers time.

26. ‘If he shall be convicted of perfidiousnes or of foul misdemeanors, as his fault shall be, so let him make amends.

27. ‘The Forests by the common advice of my Barons, I have kept in mine own hand, in the same manner as my Father had them.

^{Hotom. Feud.} ^{Hauterue. in} ^{Diction.} 28. ‘To those Souldiers or Knights who hold and maintain their Lands by Coats of Male (that is, *per see de Hauberke*, that they may be ready to attend their Lords with Habergeons or Coats of Male com- pleatly armed *Cap apee*) I grant the Plough-lands of their Domains ac- quitted from all Gelds, and from every proper Gift of mine, that, as they are eased from so great a Charge and Grievance, so they may furnish themselves well with Horse and Arms, that they may be fit and ready for my service, and for the defence of my Realm.

29. ‘I restore unto you the Law of King *Edward*, with other amend- ments, wherewith my Father amended it. Those amendments are put forth by *Lambard*. Hitherto out of those Royal and general Letters, directed to all the Subjects.

C H A P. VII.

His order for restraint of his Courtiers. What the punishment of Theft. Coyners to lose their Hands and Privy-members. Guelding a kind of death. What Half-pence and Farthings to pass. The right measure of the Eln. The Kings price set for provisions.

30. 'HE did by his Edict or Proclamation, restrain the Rapines, Thefts, and Rogueries of the Courtiers ; ordering, that 'those who were caught in such pranks, should have their Eyes with 'their Stones pulled out. This *Malmesbury* supplies us with. But *Florentius of Worcester* and *Roger Hoveden* give the account, that he punished Thieves with Death and Hanging, otherwise than that pleasant and curious man *Thomas Moor* in his *Utopia* would have his people to be dealt with. Yet I am inclined rather to believe *Malmesbury* ; not only upon the authority of the man, in comparison of whose *Role-beds* (if you well weigh the Learning of that Age) the other pack of Writers are but sorry low shrubs ; but also upon the account of a nameless Monk, who in his Book of the Miracles of S. *Thomas of Canterbury*, tells us a story of one *Eilward*, a poor mean fellow of *Kings Weston* in *Berkshire*, who being in the Reign of King *Henry the Second* condemned of Theft (he had it seems stoln a pair of Countrey Gloves and a Whetstone) was punished by losing his Eyes and Privities ; who coming with devotion to S. *Thomas* his Tomb, got an intire restitution of his disappearing Members and Faculties, and was as good a man as ever he was. Perchance in this he is no witness of infallible credit. Let the story of *Iphis and Ianthis*, and that of *Cenous* try Masteries with this for the Whetstone ; to our purpose the Writer is trusty enough. But in the first times of the *Normans*, I perceive, that the Halter was the ill consequence of Theft. 'Let it be lawful for the Abbot of that Church, if he chance 'to come in in the God-speed, to acquit an High-way-man or Thief 'from the Gallows. They are the words of the *Patent* with which *William the Conquerour*, to expiate the slaughter of *Harald*, consecrated a Monastery to S. *Martin* near *Hastings* on the Sea-coast of *Sussex*, and privileged it with choice and singular rights.

Morus in Utopia, l. 2.

De mirac.
Thom. ap.
Fox hist. ec-
cles. lib. 4.

31. 'Against Cheats, whom they commonly call Coyners ('tis *Malmesbury* speaks again) 'he shewed his particular diligence, permitting no cheating fellow to escape scot-free, without losing his Fist or Hand, who had been understood to have put tricks upon silly people 'with the traffick of their falsehood. For all that, he who hath tacked a supplement to *Florentius of Worcester*, and *William Gemeticensis* give out, that the Counterfeiter and Imbasers of Coin had, over and above those parts cut off, which *Galen* accounts to be the principal instruments for propagating of the kind. To whom *Hoveden* agrees, who writes in the Life of *Henry the First*, 'That Coyners by the Kings order being taken, 'had their right Hands and their Privy-members cut off. Upon this account sure, that he that was guilty of such a wicked crime, should have no hope left him of posterity, nor the Common-wealth be in any further

Guli. Geme-
tic. de dedib.
Norm. lib. 7.
cap. 23.

further fear of those who draw villainous principles from the loins of those that beget them.

Fest. Latro.
Heb. "ig latro à "ig lat-
tus.
Bodin de rep.
I. 6. c. 6. Dist.
55. c. 4. ff.
Ad leg. Corn.
de Sicar. I. 4.
§. ult.
Eract. lib. 3.
vtaff. 2. c. 23.
& Stamp. plac.
Coron. I. 1.
c. 38.

Now at this very time and in former Ages too, this piece of Treason was punished with Halter and Gallows ; and that also of *Theft* not only in *England*, but almost in all Countreys, especially *Robbery* upon the High-way, which is committed by those who lay wait to surprize Passengers as they travel along upon one or other side of them ; whence not only in the *Latin*, but in the holy Language also, a *High-way-man* hath his name. And truly among the Ancients *guelding* was lookt upon as a kind of death. The *Apostles Canons* give him the character and censure of a Manslayer, who cuts off his own Privities (who lives all his life a Bachelor, say the *Talmudists*) and he who cuts off another mans, is in danger of the *Cornelian Law* concerning Murderers and Cut-throats ; and so was it heretofore among the *Englysh*.

32. ' He ordered (they are *Hoveden's words*) that no half-penny, ' which also he commanded shoulde be made round, or farthing also, if it ' were intire, should be refused.

33. ' He corrected the Merchants false Eln (so sayes the Monk of *Malmesbury*) ' applying the measure of his Arm, and proposing that to ' all people over *England*.

34. ' He gave order to the Courtiers, in whatsoeuer Cities or Villages he were, how much they were to take of the Countrey people *gratis*, and at what price to buy things ; punishing offendors herein either with a great Fine of money, or with los of life.

C H A P. VIII.

The Regality claimed by the Pope, but within a while resumed by the King. The Coverfeu dispensed with. A Subsidy for marrying the Kings Daughter. The Courtesie of England. Concerning Shipwrack. A Tax levied to raise and carry on a War.

35. "A*n*selm Arch-Bishop of *Canterbury* labours earnestly with the Pope and his party, and at length obtains it with much ado, that from that time forward (you have it in *Florilegus* after other Writers) never any one should be invested with a Pastoral Staff or a Ring into a Bishoprick or Abbacy by the King, or any Lay-person whatsoever in *England*, (added out of *Malmesbury*) retaining however the priviledge of Election and Regality. There was a sharp bickering about this busines betwixt the King and *Anselm*; and so between the Popes *Pafchalis* and *Calixtus* and *Henry* about that time Emperour. Both of them at least pretendedly quit their right; our King humouring the Scene according to the present occasion. 'For after *Anselm*'s death, he did invest *Rodulphus* that came in his room by a Ring and a Pastoral Staff.

36. He restored the Night-Torches or Lights which *William* the First had forbidden; forasmuch as he now had less reason to apprehend any danger from them, the Kingdom being in a better and firmer posture.

*Stow, &c v.
Malmesb. l. 5;
de gest. reg.
fol. 88.*

37. To make up a portion for *Maud* the Kings Daughter, married to *Henry* the Emperour, every *Hide* of Land paid a Tribute of Three Shillings. Here *Polydore* makes his descent. 'Afterward, fayes he, The rest of the Kings followed that course of raising Portions for the bestowal of their Daughters; so tenacious hath posterity alway been of their own advantages. It is scarce to be doubted, that the right of raising money for the marrying of the Lords Daughters by way of *Aid* or Subsidy upon the Tenants or Dependants, is of a more ancient original. Neither would I fetch it from the mutual engagement of *Romulus* his Patrons and Clients, or Landlords and Tenants, or from *Suetonius* his *Caligula*: rather from the old Customs of the *Normans*, more ancient than King *Henry*: where that threefold Tribute is explained by the name of *Aid*, which the Patent granted by King *John* in favour of publick liberty mentions in these words: 'I will impose no Escuage or Aid in our Realm, but by the common advice of our Realm; unless it be to ransom our Body, and to make our first-born Son a Soldier or Knight, and to marry our eldest Daughter once.'

38. Some ascribe that Law to *Henry*, which Lawyers call the *Courtesie of England*; whereby a man having had a Child by his Wife, when she dyes, enjoys her Estate for his life.

*Spec. Just.
cap. des artic.
cles, &c.*

Lamb. Itiner.
rar. Cant.
West. 1. c. 4.

Pst. 46 Ed. 3.

39. He made a Law, that poor shipwreckt persons should have their Goods restored to them, if there were any living creature on Ship-board, that escaped drowning. Forasmuch as before that time, whatsoever through the misfortune of shipwreck was cast on Shoar, was adjudged to the *Exchequer*; except that the persons who suffered shipwreck and had escaped alive, did themselves within such a time refit and repair the Vessel. So the Chronicle of the Monastery of *S. Martin de Bello*. This right is called *Wreck*, or if you will, *Wareck*, of the Sea. How agreeable to the Law of Nations, I trouble not my self to enquire. That more ancient Custom, is as it were suitable to the *Norman* usage. Now at this time our Lawyers (and that the more modern Law of *Edward the First*) pass judgement according to the more correct Copy of King *Henry*. And they reckon it too among the most ancient Customs of the Kingdom. Did therefore King *Richard* order, or did *Hoveden* relate this to no purpose, or without any need? 'If one who suffers shipwreck 'dye in the Ship, let his Sons or Daughters, his Brethren or Sisters have 'what he left, according as they can shew and make out that they are 'his next heirs. Or if the deceased have neither Sons nor Daughters, 'nor Brothers nor Sisters, the King is to have his Chattels. Can one imagine, that this Law he made at *Messina*, when he was engaged in War, was calculated only for that time or place? Certainly in the Archives there is elsewhere to be met with as much as this.

40. That he might with a stout Army bear the brunt of *Baldwin Earl of Flanders* and *Louis King of France*, who had conspired, being bound by mutual Oaths to one another with the Duke of *Anjou*, to take away from King *Henry* by force of Arms the Dutchy of *Normandy*, 'he first of all (tis *Polydore* avers it) 'laid a heavy Tax upon the people, to carry on 'the new War; which thing with the Kings that followed after, grew 'to be a custom.

He was the last of the *Normans* of a Male descent, and as to the method of our undertaking, here we treat of him last.

C H A P.

C H A P. IX.

In King Stephen's Reign all was to pieces. Abundance of Castles built. Of the priviledge of Coining. Appeals to the Court of Rome now set on foot. The Roman Laws brought in, but disowned. An instance in the Wonder-working Parliament.

AS of old, unless the Shields were laid up, there was no Dancing at Weddings; so except Arms be put aside, there is no pleading of Laws. That Antipathy betwixt Arms and Laws, *England* was all over sensible of, if ever at any time, in the Reign of K. STEPHEN, Count of *Blois*, King *Henry*'s Nephew by his Sister *Adela*. For he did not only break the Law and his Oath too to get a Kingdom, but also being saluted King, by those who perfidiously opposed *Maud* the right and true heir of King *Henry*, he reigned with an improved wickedness. ‘For he did so strangely and odly chop and change every thing (it is *Malmsbury* speaks it) ‘as if he had sworn only for this intent, that he might shew himself to the whole Kingdom, a Dodger and Shammer of his Oath. But, as he saith,

— *perjuros merito perjuria fallunt?*

Ovid. Art.
Am. lib. 1.

that is,

Such men as Perjuries do make their Trade,
By their own Perjuries most justly are betray'd.

They are things of custom to which he swore, and such as whereby former priviledges are ratified, rather than new ones granted. However, some things there are, that may be worth the transcribing.

41. ‘Castles were frequently raised (’tis *Nubrigensis* relates it) in the several Counties by the bandying of parties; and there were in *England* in a manner as many Kings, or rather as many Tyrants, as Lords of Castles, having severally the stamping of their own Coin, and a power of giving Law to the Subjects after a Royal manner. Then was the Kingdom plainly torn to pieces, and the right of Majesty shattered, which gains to it self not the least lustre from stamping of Money. Though I know very well, that before the *Normans*, in the City of *Rochester*, *Canterbury*, and in other Corporations and Towns, Abbots and Bishops had by right of priviledge their Stampers and Coiners of Money.

V. Leg. Achel-
stan. 14.

42. Next to the King, *Theobald* Arch-Bishop of *Canterbury* presided over the Council of *London* (where there were also present the Peers of the Realm) ‘which buzzed with new appeals. For in *England* (tis *Henry of Huntington* sayes it) ‘appeals were not in use, till *Henry Bishop of Winchester*, when he was Legate, cruelly intruded them to his own mischief. Wherefore what Cardinal *Bellarmin* has writ, be-

Bellarmin. l. 2.
*de Rom. Pen-
tit. c. 21.*

ginning at the Synod of *Sardis*, concerning the no body knows how old time of the universal right of appealing to the Pope of *Rome*, does not at all, as to matter of fact, seem to touch upon this Kingdom of ours by many and many a fair mile.

*Polyctat. I. 8.
c. 22.*

43. ‘In the time of King *Stephen* (so’tis in the *Polycraticon* of *John of Salisbury*) ‘the *Roman Laws* were banisht the Realm, which the House of the Right Reverend *Theobald Lord Primate of Britanny* had fetcht or sent for over into *Britanny*. Besides, it was forbidden by Royal Proclamation, that no one should retain or keep by him the Books. If you understand the Laws of the Empire (I rather take them to be the Decrees of the Popes) it will not be much amiss, out of the Parliament Records to adjoyn these things of later date. In the Parliament holden by *Richard of Bourdeaux*, which is said to have wrought Wonders, Upon the Impeachment of *Alexander Nevil Arch-Bishop of Canterbury*, *Robert Were Duke of Ireland*, *Michael Pole Earl of Suffolk*, *Thomas Duke of Gloucester*, *Richard Earl of Arundel*, *Thomas Beauthamp Earl of Warwick*, and others. That they being intrusted with the management of the Kingdom; by soothing up the easie and youthful temper of the King, did assist one another for their own private interest, more than the publick, well near to the ruine and overthrow of the Government it self ; the Common Lawyers and Civilians are consulted with, about the form of drawing up the Charge ; which they answer all as one man, was not agreeable to the rule of the Laws. But the Barons of Parliament reply, That they would be tyed up to no rules, nor be led by the punctilioes of the *Roman Law*, but would by their own authority pass judgement ; pur ce que la roialme d’ Angleterre n’ estoit devant ces heures, n’ y a l’ entent de nostre dit Seigneur le Roy & Seigneurs de Parliament que ne sera rules ne gouvernes per la Loy Civil : that is, insasmuch as the Realm of England was not before this time, nor in the intention of our said Lord the King and the Lords of Parliament ever shall be ruled or governed by the Civil Law. And hereupon the persons impleaded are sentenced to be banished.

*Rot. Parl.
11 Rich. 2.*

But here is an end of *Stephen*: He fairly dyed.

C H A P. X.

In King Henry the Seconds time, the Castles demolished. A Parliament held at Clarendon. Of the Advowson and Presentation of Churches. Estates not to be given to Monasteries without the Kings leave. Clergymen to answer in the Kings Court. A Clergynan convict, out of the Churches Protection. None to go out of the Realm, without the Kings leave. This Repealed by King John. Excommunicate Persons to find Surety. Laymen how to be impleaded in the Ecclesiastical Court. A Lay-Jury to swear there, in what case. No Homager or Officer of the Kings to be Excommunicated, till H: or his Justice be acquainted.

AT length, though late first, *Henry the Son of Jeoffry Plantagenet, Count of Angers* by the Empress *Maud*, came to his Grandfathers Inheritance. Having demolished and levelled to the ground, the Castles which had, in King *Stephen's* time, been built, to the number of eleven hundred and fifteen; and having retrieved the right of Majesty into its due bounds, he confirmed the Laws of his Grandfather. ‘Moreover, at *Clarendon* in *Wiltshire*, near *Salisbury*, *John of Oxford* being President, by the Kings own Mandate, there being also present the Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, and Peers of the Realm, other Laws are recognized and passed; whilst at first those who were for the King on one side, those who were for the Pope on the other, with might and main sticke to have it go their way; these latter pleading, that the secular Court of Justice did not at all suit with them, upon pretence that they had a priviledge of Immunity. But this would not serve their turn; for such kind of Constitutions as we are now setting down, had the Vogue.

44. ‘If any Controversie concerning the Advowson and Presentation of Churches, arise betwixt Laymen, or betwixt Laymen and Clergymen, or betwixt Clergymen among themselves; let it be handled and determined in the Court of the Lord our King.

45. ‘The Churches which are in the Kings Fee, cannot be given to perpetuity without his assent and concession. Even in the *Saxons* times it seems it was not lawful, without the Kings favour first obtained, to give away Estates to Monasteries; for so the old Book of *Abingdon* says. ‘A Servant of King *Ethelred's* called *Ulfic Spot*, built the Abby of *Burton* in *Staffordshire*, and gave to it all his Paternal Estate, appraised at seven hundred pounds; and that this donation might be good in Law, he gave King *Ethelred* three hundred Marks of Gold for his confirmation of it, and to every Bishop five Marks, and over and above to *Alfric* Arch-Bishop of *Canterbury*, the Village of *Dumbleton*. Camden. A. 1004.

46. ‘Clergymen being arraigned and accused of any matter whatsoever, having been summoned by the Kings Justice, let them come into his Court, there to make answer to that, of which it shall be thought fit

'fit that there answer ought to be made: So that the Kings Justice send
'into the Court of Holy Church, to see after what manner the businſ
'there shall be handled.

47. 'If a Clergyman shall be convicted, or shall confess the Fact; the
Church ought not from thenceforth to give him protection.

48. 'It is not lawful for Arch-Bishops, Bishops, and Persons of the
Kingdom, to go out of the Realm without leave of our Lord the King:
'And if they do go out, if the King please, they shall give him security,
'that neither in going, nor in returning, or in making stay, they seek
'or devise any mischief or damage against our Lord the King. Whether
you refer that Writ, we meet with in the Register or Record, *NE EXEAS REGNUM*, for Subjects not to depart the Kingdom to
this time or instance, or with *Polydore Virgil to William Rufus*, or to la-
ter times, is no very great matter: Nor will it be worth our while, cu-
riously to handle that question: For who, in things of such uncertainty,
is able to fetch out the truth? Nor will I abuse my leasure, or spend time
about things unapproachable.

Metamor. I;
10.

An sit & hic dubito, sed & hic tamen auguror esse.

Says the Poet in another case: And so say I.

Whether it be here or no,
Is a Question, I confess:
And yet for all that, I trow,
Here it is too, as I guess.

Out of King John's great Charter, as they call it, you may also com-
pare or make up this Repeal of that Law in part. 'Let it be lawful hence-
forward for any one to go out of our Realm, and to return safely and
securely by Land and by Water, upon our Royal word; unless in time
of War, for some short time, for the common advantage of the King-
dom; excepting those that are imprisoned and out-lawed according to
the Law of the Kingdom, and any People or Nation, that are in actual
War against us: And Merchants, concerning whom let such Order be
taken, as is afore directed. I return to King Henry.

49. 'Excommunicate Persons ought not to give suretiship for the Re-
mainder, nor to take an Oath; but only to find Surety and Pledge,
'to stand to the Judgment of the Church, that they may be ab-
'solved.

50. 'Persons of the Laity ought not to be accused or impleaded but
'by certain and legal Accusers and Witnesses, in the presence of the Arch-
Bishop or Bishop; so that the Arch-Deacon may not lose his right, nor
'any thing which he ought to have therefrom.

51. 'If

51. 'If they be such Persons who are in fault, as no one will or dare
'to accuse ; let the Sheriff being thereunto required by him, cause twelve
'legal men of the Voisnage or of the Village, to swear before the Bi-
'shop, that they will manifest or make known the truth of the matter
'according to their Conscience.

52. 'Let no one who holds of the King in *capite*, nor any one of the
'Kings Officers or Servants of his Domain, be excommunicated ; nor
'the Lands of any of them be put under an Interdict or prohibition ; un-
'less first our Lord the King, if he be in the Land, be spoke with ; or his
'Justice, if he be out of the Land, that they may do right by him : And
'so that what shall appertain to the Kings Court, may be determined
'there ; and as to what shall belong to the Ecclesiastical Court, it may
'be sent thither and there treated of.

C H A P.

C H A P. XI.

Other Laws of Church affairs. Concerning Appeals. A Suit betwixt a Clergyman and a Layman, where to be Tryed. In what case one, who relates to the King, may be put under an Interdict. The difference betwixt that and Excommunication. Bishops to be present at Tryals of Criminals, until Sentence of Death, &c. pass. Profits of vacant Bishopricks, &c. belong to the King. The next Bishop to be Chosen in the Kings Chappel, and to do Homage before Consecration. Deforcements to the Bishop, to be righted by the King. And on the contrary, Chattels forfeit to the King, not to be detained by the Church. Pleas of debts whatsoever in the Kings Court. Yeomens Sons not to go into Orders without the Lords leave.

V. Rog. Hove-
den. fol. 303.

Coke pafat.
ad Lib. 5.

53. *C*oncerning Appeals, if at any time there shall be occasion for them, they are to proceed from the Arch-Deacon to the Bishop, and from the Bishop to the Arch-Bishop; and if the Arch-Bishop shall be wanting in doing of Justice, they must come in the last place to our Lord the King; that by his precept or order, the Controversie may be determined in the Arch-Bishops Court, so as that it ought not to proceed any further without the Kings assent. This Law, long since, the famous Sir Edward Coke made use of, to assert and maintain the Kings Ecclesiastical Jurisdiction, as a thing not of late taken up by him, but anciently to him belonging.

54. *If a Claim or Suit shall arise betwixt a Clergyman and a Layman, or betwixt a Layman and a Clergyman, concerning any Tenement which the Clergyman would draw to the Church, and the Layman to a Lay-fee; it shall by the recognizance of twelve legal men, upon the consideration and advisement of the Lord Chief Justice, be determined, whether the Tenement do appertain to Alms (i. e. to the Church) or to Lay-Estate, before the Kings own Justice. And if it shall be recognized or adjudged to appertain to Alms; it shall be a Plea in the Ecclesiastical Court: But if to a Lay-fee, unless they both avow or avouch the Tenement from the same Bishop or Baron, it shall be a Plea in the Kings Court. But if each of them shall for that fee avouch the same Bishop or Baron, it shall be a Plea in that Bishops or Barons Court; so that he who was formerly seised, shall not, by reason of the Recognizance made, lose the Seisin, till it shall by Plea be deraigned.*

55. *He who shall be of a City, or a Castle, or a Burrough, or a Manner of the Kings Domain, if he shall be cited by an Arch-Deacon or a Bishop, upon any misdemeanour, upon which he ought to make answer to him, and refuse to satisfie upon their summons or citations; they may well and lawfully put him under an Interdict or Prohibition; but he ought not to be Excommunicated. (By the way) seasonably remark out of the Pontifical Law, that that Excommunication, they call the*

the greater, removes a man and turns him out from the very Communion and Fellowship of the Faithful; and that an *Interdict*, as the lesser Excommunication, separates a man, and lays him aside only, forbidding him to be present at Divine Offices, and the use of the Sacraments.)
 'I say he ought not to be Excommunicated, before that the Kings Chief Justice of that Village or City be spoken with, that he may order him to come to satisfaction: And if the Kings Justice fail therein, he shall be at the Kings mercy, and thereupon or after that the Bishop may punish him upon his impleadment, with the Justice of the Church.'

56. 'Arch-Bishops, Bishops, and all Persons whatsoever of the Kingdom, who hold of the King *in capite*, and have their possessions from our Lord the King in nature of a Barony, and thereupon make answer to the Kings Justices and Officers, and perform all Rights and Customs due to the King as other Barons do; they ought to be present at the Tryals of the Court of our Lord the King with his Barons, until the losing of Limbs or death, be adjudged to the party tried.'

57. 'When an Arch-Bishoprick or Bishoprick, or Abbacy, or Priory of the Kings Domain shall be void; it ought to be in his hand, and thereof shall he receive all the profits and issues as belonging to his Domain: And when the Church is to be provided for, our Lord the King is to order some choice persons of the Church, and the Election is to be made in the Kings own Chappel, by the assent of our Lord the King, and by the advice of those persons of the Kingdom, whom he shall call for that purpose; and there shall the Person Elect (saving his order) before he be Consecrated, do Homage and Fealty to our Lord the King, as to his Liege Lord, for his life and limbs, and for his Earthly Honour.'

58. 'If any one of the Nobles or Peers do deforce to do Justice to an Arch-Bishop, Bishop, or Arch-Deacon, for themselves or those that belong to them; the King in this case is to do justice.'

59. 'If peradventure any one shall deforce to the Lord the King his Right; the Arch-Bishop, Bishop, and Arch-Deacon, ought then in that case to do justice (or to take a course with him) that he may give the King satisfaction.'

60. 'The Chattels of those who are in the Kings forfeit, let not the Church or Church-yard detain or keep back against the justice of the King; because they are the Kings own, whether they shall be found in Churches or without.'

61. 'Pleas of debts which are owing, either with security given, or without giving security, let them be in the Kings Court.'

62. 'The Sons of Yeomen or Country people, ought not to be ordained or go into holy Orders, without the assent of the Lord, of whose Land they are known to have been born.'

C H A P. XII.

The Statutes of Clarendon mis-reported in Matthew Paris, amended in Quadrilegus. These Laws occasioned a Quarrel between the King and Thomas a Becket. Witness Robert of Gloucester, whom he calls **Punen**. The same as Rusticks, i. e. Villains. Why a Bishop of Dublin called **Scorch-Wilkin**. Villanage before the Normans time.

I Confess there is a great difference between these Laws and the Statutes of Clarendon, put forth in the larger History of Matthew Paris, I mean those mangled ones; and in some places, what through great gaps of fence, disjoinings of Sentences, and misplacings of words, much depraved ones, whose misfortune I ascribe to the carelessness of Transcribers. But the latter end of a Manuscript Book commonly called *Quadrilegus*, (wherein the Life of Thomas, Arch Bishop of Canterbury, is out of four Writers, to wit, Hubert of Bosham, John of Salisbury, William of Canterbury, and Alan, Abbot of Tewksbury, digested into one Volume) hath help us to them amended as you may see here, and set to rights. It is none of our busyness to touch upon those quarrels, which arose upon the account of these Laws betwixt the King and Thomas of Canterbury: Our Historians do sufficiently declare them. In the mean time, may our Poet of Gloucester have leave to return upon the Stage, and may his Verses written in ancient Dialect, comprising the matter which we have in hand, be favourably entertained.

No man ne might thenche the lobe that there was
 Bitwene the K. h. and the good man S. Thomas;
 The diuel had enui thereto, and sed bitwen them feu,
 Alas, alas chulke stond, vox all to well it greu.
 Vox there had ere ibe kings of Luther dede
 As W. Basard, and his son W. the rede.
 That Luther Lawes made inou, and held in al the lond
 The K. nold not beleue the lawes that he sond,
 Ne that his elderne bulde, ne the godeman S. Thomas
 Thought that thing age right never law nas.
 Ne sothnes and custum mid strength up thold,
 And he wist that vre dere Lourd in the Gospel told
 That he himselfe was sothnes, and custum nought,
 Theruoxe Luther custumes he nould graent nought.
 Ne the K. nould biseue that is elderne ad thold,
 So that conteke sprung bitwene them manifold.
 The K. dwou to right law man Luther custume,
 S. Thomas they withsed, and granted some.
 The Lawes that icholle now tell be granted vawe.
 Zuk a yuman hath a sone to clergi idraw
 He ne fall without is lourdes scrouned nought be
 Vox yuman ne mai nought be made agen is lourds will free.

Those

Those that are byn slaves or thos other sort of servants termed *Villains*, he calls by the name of *Hunten*. We call free-born Commoners, alike as Servants; but were with a badg of a godlynes or vngentility, *Peomen*; and those who of that number are married men, *Gommen*; for it was *Gommen* in the old *Dutch*, not *Goodman*, as we vulgarly pronounce it, which signified a married man. Words, as I am verily perswaded, made from the Latin, *Hominis*, which very word, by *Ennius* and *Festus*, according to the *Oscar Idiom*, is written *Hemones*, and in our Language, which comes pretty neare that spelling of the Poet, *Neomen*. And the *Eystman* or Origination of the word it self, is very much confirmed by the opinion of some of our own Country Lawyers, who take (but with a mistake) *Hominis*, i. e. men that do homage, and *Nativos*, i. e. born Slaves, in ancient Pleas to be terms equipollent, and of the same importance. The Constitution of *Clarendon* style those *Rusticks* or Countrymen, whom he calls *Humen*; and *Rusticks* and *Villains* (those among the *English* were slaves or servants) were anciently synonymous words, meaning the same thing. For whereas *Henry Londres*, Arch Bishop of *Dublin*, had treacherously committed to the flames, the Charters of his Rustick Tenants, the Free Tenants called him, as we read in the Annals of *Ireland*, *Storch-Villein*; as if one would say, the burner or firer of Villains.

Nor should I think it unseasonable in this place, to take notice of a mistake or oversight of *Thomas Spott*, a Monk of *Canterbury*; who writes, that the *English*, before the *Norman Conquest*, knew nothing of private servitude or bondage; i. e. had no such thing as Villanage among them: For he is convinced both by the Maid of *Andover*, King *Edgar's* Miss, as also by the Laws signed and sealed by King *Ina*, and by that Donation or Grant *Torald of Buxenbale* made to *Walgate*, Abbot of *Crowland*; wherein among other things a great many servants are mentioned, with their whole suits and services. Take it also out of the Synod of *London*, *Anselme* being President of it (since here belike there is mention made of Servants) *That no one henceforward presume to use that ungodly practice, which hitherto they were wont in England to do, to sell, or put to sale, men, (that is, Servants) like brute Beasts.*

But we do not do civilly to interrupt the Poet: We must begin again with him; he once more tunes his Pipes.

Another thing he granted eke as ye mow nobise;
Yuf a man of holi Chirch bath eni lay see,
Parson, other what he be, he sial do therewore
Kings service that there valth, that is right ne be voxlore,
In plaiding and in assise be and in judgement also.
Vote war man sial be biledmed, other to deth ido.
He granted eke yuf eni man the Kings traitor were,
And eni man is chateux to holi chirch bere
That holi chirch ne solde nought the chateux there let
That the R. there other is as is owne is ne wette.
Vox all that the felon hath the Kings it is
And ech man mai in holi church is owne take iwis.
He granted eke that a chirche of the Kings se
In none stede ene and ever ne sold igiue be

40 A.D. p. 21.
& 32. Ed. 4.
tr. Barr. 261.

Annal. Hiber.
1212. sub
Henr. 3.
Malmsb. l. 2.
de gest. reg. c.
8. & Ingulph.
fol. 519.

Malmsb. l. t.
de gest. Pont.

As to houſe of religion, without the Kings leue,
 And that he other the patron the gift fift gabe.
 S. Thomas granted well theſe and other mo
 And theſe other he withſeſde that did him well woe.

I. Huf bituene twei leud men were eni ſtriving,
 Other bituene a leud and a clert, for holi chirch thing
 As boꝝ bouſon of chirch whether ſhould the chirch giue,
 The R. wold that in his court the ple ſhould be dñeue;
 Woꝝ as much as a leud man that the o parti was
 Chanliche was under the R. & under no bishop nas.

C H A P.

C H A P. XIII.

The Poet gives account which of those Laws were granted by Thomas a Becket, which withstood. **Leudemēn** signifies Laymen, and more generally all illiterate Persons.

THAT which this Author of ours calls **Leudemēn**, the Interpreters of Law both our Common and the Canon Law call *Laicks*, or *Laymen*. For as *λαός*, i.e. people, as it is derived by *Cesar Germanicus*, upon *Aratus* his *Phenomena* after *Pindar*, and as *λαός*, i. e. from a *Stone*, denotes a hard and promiscuous kind of men; so the word *Leudes* imports the illiterate herd, the multitude or rabble, and all those who are not taken into holy Orders. *Justus Lipsius* in his *Poliorcetics*, discourses this at large; where he searches out the origination of *Leodium* or *Liège*, the chief City of the *Eburones* in the *Netherlands*. As to what concerns our language, *John Gower* and *Geoffry Chaucer*, who were the Reformers and Improvers of the same in Verse, do both make it good. Thus *Geoffry*.

No wonder is a leude man to rust
If a Priest be soule on whom we trust.

*Cæs. Germ. ad Arat. In Aquario.
Pindar. Olym. 9.
Lipf. Poliorcet. lib. 1. dis fert. 2.*

Chauc. in Prolog. of the Summers tale.

However, that it signifies an illiterate or unlearned person, as well as one not yet in orders; what he saith elsewhere, informs us.

This every leud Clerc and Parson can say.

And Peter of Blois, and others, use this expression; as well Laymen as Pet. Blesens. Scholars. But let not Chaucer take it ill, that here he must give way to app. ad Iogulph.

II. Another was that no cleric, ne bishop nath mo,
Ne solde without Kings leue out of the lond go.
And that hii solde suere up the boke pwis.
That hii ne sold purchas no ubel the R. ne none of is.

III. The thrid was yef eni man in mausing were I brought,
And luth come to amendment, ne age were nougnt.
That he ne suoze vp the bot, ac bozowes find solde
To stand to that holy Chirch there of him toky wold.

IV. The verth was that no man that of the R. buld ought
In cheise or in eni servise in mausing were ibrought,
Bote the wardeins of holy chirch that brought him thereto,
The R. sede or is bailifes wat he ad misdo,
And loked verst were thei to amendment it bring,
And bote hii wolde by their leue do the mausing.

V. The vist was, that bishoprikes and Abbeis also
That vacans were of prelas in the R. hand were ido,

And

And that the R. sold all the land as is owne take,
Wor at last that him lust eni prelat there make.
And than thulke presat sould in is chapel ichose he.
Of is clarks which he wuld to such prelace bise.
And than wan he were ichose in is chapel right yere,
Homage he tolde him do at he confirmed were.

VI. The sixt was yuf eni play to chaple were idaw,
And eni man made is appele, yuf me dude him unaw,
That to the Bishop from Erredekene is appale sold/make,
And from Bishop to Arcebisop and curahe other luke,
And but the Errebisops court to right him wold bring,
That he sold from him he cluthe brouze the Kinge al warrs,
And from the R. non other mo so that actan end
Plaunting of holi chirch to the R. shold wend.
And the R. amend solde the Errebisops deede, od omni natiun
And do as in the Popes stude, and S. Thomas it withsede.

VII. The seveth was that plaiding that of det/were
To yeld wel thorou truth iplight, and nougnt ibold mere
Althei thorou truth it were, that ple sold be ibrought
Brouze the R. and is bailies and to holy chirch nougnt.

VIII. The eighth that in the lond citationnone nere
Thorou bull of the Pope of Rome, and clene billeued were.

IX. The nithe was that Peters pence that me gadereth maner
The Pope nere nougnt on isend, ac the R. echone.

X. The tethe was yuf eni Clarke as felon were itake,
And vor felon iprobed and ne might it not forsake,
That me sold him verst diordein and such thorou there law.
And thorou judgement of the land hong hym other to daw.
Wor these and vor other mo the Godeman S. Thomas
Flew verst out of England and eke imarred was.
Wor he sei there nas bote o way other he must kifte her
Other holy chirch was isent, that of right was so fre.

C H A P. X I V.

The Pope absolves Thomas a Becket from his Oath, and damns the Laws of Clarendon. The King resents it, writes to his Sheriffs, Orders a Seizure. Penalties inflicted on Kindred. He provides against an Interdict from Rome. He summons the Bishops of London and Norwich. An Account of Peter Pence.

To the Laws of *Clarendon*, which I spoke of, the States of the Kingdom (the *Baronage*) and with them the Arch-Bishop of *Canterbury*, took their Oaths in solemn manner, calling upon God. There were Embassadors sent to Pope *Alexander* the third, that there might be that bottom also, that he would further confirm and ratifie them. But he was so far from doing that, that he did not only pretend that they did too much derogate from the priviledge of the Clergy, and wholly refuse to give his assent to them; but also having absolved *Thomas* the Arch-Bishop, at his own request, from the obligation of that Oath he had bound himself with, he condemned them as impious, and such as made against the interest and honour of holy Church. King *Henry*, as soon as he heard of it, took it, as it was fit he should, very much in dudgeon; grievously and most deservedly storming at the insolence of the *Roman* Court, and the Treachery of the Bishop of *Canterbury*. Immediately Letters were dispatcht to the several Sheriffs of the respective Counties, ‘That if any Clerk or Layman in their Bayliwicks, should appeal to the Court of *Rome*, they should seise him and take him into firm custody; till the King give order what his pleasure is: And that they should seise into the Kings hand, and for his use, all the Revenues and Possessions of the Arch-Bishops Clerks; and of all the Clerks that are with the Arch-Bishop; they should put by way of safe pledge the Fathers, Mothers, and Sisters, Nephews and Neices, and their Chattels, till the King give order what his pleasure is. I have told the Story out of *Matthew Paris*.

You see in this instance a penalty, where there is no fault: It affects or reaches to their Kindred both by Marriage and Blood; a thing not unusual in the declension of the *Roman* Empire after *Augustus* his time. *But let misdemeanors hold or oblige those who are the Authors of them* (was the Order of *Arcadius* and *Honorius*, Emperors, to the Lord Chief Justice *Eustochius*) *nor let the fear of punishment proceed further than the offence is found.* A very usual right among the *English*, whereby bating the taking away the Civil Rights of Blood and Nobility, none of the Posterity or Family of those who lose their honours, do for the most hainous crimes of their Parents, undergo any penalties.

But this was not all, in those Letters I mentioned, he added threats also.

63. ‘If any one shall be found carrying Letters or a Mandate from the Pope, or *Thomas*, Arch-Bishop of *Canterbury*, containing an interdiction of Christian Religion in *England*, let him be seised and kept in hold, and let Justice be done upon him without delay, as a Traitor against the King and Kingdom. This *Roger of Hoveden* stands by, ready to witnes.

64. ‘Let

C. de pénis.
I. 21. sancti-
mus.

V. Canut. leg.
74.

64. 'Let the Bishops of *London* and *Norwich* be summon'd, that they may be before the Kings Justices to do right (*i. e.* to answer to their charge, and to make satisfaction) that they have contrary to the Statutes of the Kingdom, interdicted the Land of Earl *Hugh*, and have inflicted a sentence of Excommunication upon him. This was *Hugh Bigod*, Earl of *Norfolk*.

65. 'Let St. Peters pence be collected, or gathered, and kept safe. Those Pence were a Tribute or Alms granted first by *Ina* King of the *West-Saxons*; yearly at *Lammas* to be gathered from as many as 'had thirty pence (as we read it in the *Confessor's Laws*) 'of live-mony in their house. These were duly, at a set time, paid in, till the time of *Henry the eighth*; when he set the Government free from the Papal Tyranny: About which time *Polydore Virgil* was upon that account in *England*, Treasurer, or Receiver general. I thought fit to set down an ancient brief account of these pence, out of a Rescript of Pope *Gregory* to the Arch-Bishops of *Canterbury* and *York*, in the time of King *Edward the second*.

Fox. in hist.
Eccles. Ed. 2.
Rescript. dat.
10. Kal. Maii
ap. Veterem
urbem, Pon-
tificat. 2.

Dioceſſ	li.	s.	d.
<i>Canterbury</i>	07	18	00
<i>London</i>	16	10	00
<i>Rochester</i>	05	12	00
<i>Norwich</i>	21	10	00
<i>Ely</i>	05	00	00
<i>Lincoln</i>	42	00	00
<i>Coventry</i>	10	05	00
<i>Cheſter</i>	08	00	00
<i>Wincheſter</i>	17	06	08
<i>Exceter</i>	09	05	00
<i>Worceſter</i>	10	05	00
<i>Hereford</i>	06	00	00
<i>Bath</i>	12	05	00
<i>York</i>	11	10	00
<i>Salisbury</i>	17	00	00

It amounts to three hundred *Marks* and a *Noble*; that is, two hundred *Pounds* ſterling, and six *Shillings* and eight *Pence*.

You are not to expect here the murder of *Thomas a Becket*, and the story how King *Henry* was purged of the crime, having been abſolved upon hard terms.

Conveniunt cymbæ vela minora mea.

My little Skiff bears not ſo great a Sail.

C H A P. X V.

A Parliament at Northampton. Six Circuits ordered. A List of the then Justices. The Jury to be of twelve Knights. Several sorts of Knights. In what cases Honorary Knights to serve in Juries. Those who come to Parliament by right of Peerage, sit as Barons. Those who come by Letters of Summons, are styled Chevaliers.

Not long after, the King and the Barons meet at *Northampton*. They treat concerning the Laws and the administration of Justice: At length the Kingdom being divided into six Provinces or *Circuits*, there are chosen from among the Lawyers, some, who in every of those Provinces might preside in the Seat of Justice, Commissioned by the Name of *Itinerant Justices*, or *Justices in Eyre*. See here the List and Names of those Justices out of *Hoveden*.

Hugh de Cressi.
Walter Fitz-Robert.
Robert Mantel.

{ for

Norfolk.
Suffolk.
Cambridge.
Huntington.
Bedford.
Buckingham.
Essex.
Hertford.

Hugh de Gundeville.
William Fitz-Ralph.
William Ballat.

{ for

Lincoln.
Nottingham.
Darby.
Stafford.
Warwick.
Northampton.
Leicester.

Robert Fitz-Bernard.
Richard Gifford.
Roger Fitz-Reinfrat.

{ for

Kent.
Surrey.
Southampton.
Sussex.
Berkshire.
Oxford.

William Fitz-Steeven.
Bertam de Verdun.
Turstan Fitz-Simon.

{ for

Hereford.
Glocester.
Worcester.
Shropshire.

M

Ralph

Ralph Fitz-Steeven.
William Ruffus.
Gilbert Pipard.

Wiltshire.
Dorsetshire.
Somersetshire.
Devonshire.
Cornwall.

Robert de Wals.
Ralph de Glandville.
Robert Pidenor.

York.
Richmond.
Lancashire.
Copland.
Westmoreland.
Northumberland.
Cumberland.

' These he made to take an Oath, that they would themselves, *bona fide*, in good faith, and without any deceit or trick, ('tis the same Author whose words I make use of) 'keep the under-written *Affizes*, and 'cause them inviolably to be kept by the men of the Kingdom. He mentions them under this specious Title.

The ASSISES of King HENRY, made at Clarendon, and renewed at Northampton.

66. 'If any one be called to do right (or be served with a Writ) before 'the Justices of our Lord the King, concerning Murder, or Theft, or 'Robbery, or the receiving and harbouring of those who do any such 'thing; or concerning Forgery, or wicked setting fire of houses, &c. 'let him upon the Oath of twelve Knights of the Hundred; or if there be 'no Knights there, then upon the Oath of twelve free and lawful men, 'and upon the Oath of four men out of each Village of the Hundred, 'let him go to the Ordeal of Water, and if he perish, i. e. sink, let him 'lose one foot. The Knights who are wanting here, are perhaps those who hold by Knights service, or if you had rather, that hold by Fee; betwixt whom, and those who served in War for wages or pay, which in the Books of Fees are called *Solidate* (the same peradventure as by Cæsar are termed *Soldurii*, that is, *Soldiers*; by *Nicolaus Damascenus*, Σιλαοντει, by our Monks, *Braeton*, *Otho Frisingensis*, and *Radevicus*, in the Camp Laws of *Barbarossa*, are styled *Servientes*, that is, *Serjeants*) there is an apparent difference; both of them being placed far below the dignity of those honorary Knights, who are called *Equites aurati*.

Cas. comm. l.
2. Ath. dipn. l. 6. Feud. l. 2.
tit. 20. Otho
Frif. lib. de
Frederic. 1.
Radevic. l. 1. c.
26.

Braet. l. 5. de
Eftionii. c. 10.
& 26 Ed. 2 fo.
57. a. 30 Ed.
2. fol. 2. 6. v. 17
Ed. 2. tit.
Attaint.
60. 1. Ed. 2. tit.
Challenge.
115. Pla. com.
fol. 117. 8 H.
6. fol. 10.

But yet I do very well know, that these honorary Knights also were of old time, and are now by a most certain right cal'd forth to some Tryals by Jury. To the Kings Great or Grand *Affise* (I say) and to a Suit of Law contested, when a Baron of Parliament is Party on one side, i. e. Plaintiff or Defendant. To the *Affise*, in that it is the most solemn and honourable way of Tryal, and that which puts an utter end to the claim of the Party that is caſt. To such an unequal suit, that there may be some equality of Name or Title, as to ſome one, at leaſt, of the Judges (for the Jury or twelve men are upon ſuch occation Judges made) and

and as to the more honourable of the two parties, whether Plaintiff or Defendant. For the *Peers* of Parliament, who are the greater Nobles (amongst whom by reason of their Baronies, *Arch-Bishops* and *Bishops*, heretofore a great many *Abbots*) such as are *Dukes*, *Marqueffes*, *Earls*, *Viscounts*, and *Barons*; who though they be distinguished by Order and honorary Titles, yet nevertheless they sit in Parliament, only as they are *Barons* of the Realm. And those who at the Kings pleasure are called in by Letters of summons, as Lawyers term it, are styled **Chevaliers**, not *Barons*. For that of *Chevalier* was a Title of Dignity; this of *Baron* anciently rather, of Wealth, and great Estate. Which Title only such Writs of Summons bestowed till Richard the seconds time, who was the first that by Patent made *John Beauchamp* of *Holt*, Baron of *Kiderminster*: Now both ways are in fashion.

M 2

C H A P.

C H A P. XVI.

*The person convict by Ordeal, to quit the Realm within Forty dayes.
Why Forty dayes allowed. An account of the Ordeals by Fire and Water. Lady Emme clear'd by going over burning Coulters. Two sorts of tryal by Water. Learned conjectures at the rise and reason of these customs. These Ordeals, as also that of single Combat condemned by the Church.*

67. **A**T Northampton it was added for the rigour of Justice, (remember what was said in the foregoing Chapter) ‘that he should in like manner lose his right Hand or Fist with his Foot, and forsweare the Realm, and within Forty Dayes go out of the Kingdom into banishment. (He had the favour of Forty Dayes allowed him, so saith Bracton, that in the mean time he might get help of his friends to make provision for his Passage and Exile.) ‘And if upon the tryal by water he be clean, i. e. innocent, let him find pledges, and remain in the Realm, unless he be arraigned for Murder, or any base Felony, by the Community or Body of the County, and of the Legal Knights of the Countrey, concerning which, if he be arraigned in manner aforesaid, although he be clean by the tryal of Water; nevertheless let him quit the Realm within Forty Dayes, and carry away his Chattels along with him, saving the right of his Lords, and let him forswear the Realm at the mercy of our Lord the King.

Bract. tract.
de Coron. l. 3.

Here let me say a little concerning the Tryal by Fire and Water, or the Ordeals. It is granted, that these were the *Saxons* wayes of tryal, rashly and unadvisedly grounded upon Divine Miracle. They do more appertain to Sacred Rites, than to Civil Customs; for which reason we pass them by in the former Book, and this place seemed not unseasonable to put the Reader in mind of them. ‘He who is accused, is bound to clear himself (’tis Ralph Glanvill writes this) by the Judgement of God, to wit, by hot burning Iron, or by Water, according to the different condition of men: by burning hot Iron, if it be a free-man; by Water, if he be a Countrey-man or Villain. The party accused did carry in his hand a piece of Iron glowing hot, going for the most part two or three steps or paces along, or else with the soles of his feet did walk upon red hot Plough-shares or Coulters, and those, according to the Laws of the *Franks* and *Lombards*, nine in number. The Lady *Emme* the Confessor’s Mother being impeached of Adultery with *Aldwin* Bishop of *Winton*, was wonderfully cleared by treading upon so many, and is famous for it in our Histories, being preserved safe from burning, and proved innocent from the Crime.

Glanv. l. 14.
c. 1.

Polydor. hist.
l. 8.
Matth. Park.
in vit. Rob.
Archiep.
Cant.

There were two sorts of watery *Ordeal* or tryal by Water; to wit, cold or scalding hot. The party was thrown into the cold water, as in some places at this day Witches are used: he who did not by little and little sink to the bottom, was condemned as guilty of the Crime, as one whom that Element, which is the outward sign in the Sacrament of Regeneration, did not admit into its bosome. As to scalding Water, ones arm in

in that manner thrust in up to the elbow, made a discovery of the truth; and *Ælstan* a Monk of *Abendon*, afterward Bishop of *Shirburn*, thrusting in his bare Hand into a boiling Cauldron, shewed himself with some pride to his Abbot.

But that they say, that Rusticks or Vassals only were tryed by Water, (for *Water* is ascribed to the earthly and ignoble nature, *Fire* to the heavenly; so that from the use of Fire peculiar to man, *Firmianus Lactantius* hath fetcht an argument for the Immortality of the Soul) that this is not altogether so true, is made out by that one example of *John*, a Noble and Rich old man, who in the time of King *Henry the Second*, when, being charged with the death of his Brother the Earl of *Ferrers*, he could not acquit himself by the Watery Tryal, was hang'd on a Gallows.

Whence or by what means both these Customs were brought in among Christians, 'tis none of my busines to make an over strait inquiry. I remember that *Fire* among the Ancients was accounted purgative; and there is one in a Tragedy of *Sophocles* intitled *Antigone*, who of his own accord profest to King *Creon*,

— ἢ μύδης αἴρεν χρόνιν
Καὶ πᾶς διητεν. —

Malmesb. I. 2.
de gest. Pontif.
Laet. Instit.
I. 7. de divin.
præm. c. 9.
Hoveden. annal. I. 2.

Cœl. Rhod.
antiq. sect.
I. 17. c. 21.

Sophocles in
Antigone.

**That in his hands he red-hot gads would keep,
And over burning gleads would bare-foot creep.**

to shew himself innocent as to the Burial of *Polynices*. I pass by in silence that *Pythagorical* opinion, which placeth Fire in the Centre of the Universe, where *Jupiter* hath his Prison; which Firesome, however the *Peripateticks* stiffly oppose it, would have to be in plain terms the *Sun*,

— ὃς μάτ' ἴσχει, καὶ μάτ' ἴμακει.

Arist. 2. de
Cælo.

Iliad. 3.

Who all things overlooks, and all things hears.

Yet I shall not omit this, that in the holy Bible the great and gracious God hath of a truth discovered himself to mortal conception in the very name of *Fire*, *vn*, as a thing agreeable to Divinity, as faith *John Reuchlin*; and that *S. Paul* hath, according to the *Psalmiss* mind, stiled the Ministers of God, *a flame of fire*. And indeed to abuse the holy Scriptures, by mis-interpreting them, is a custom too ancient and too common.

Homer and *Virgil* both sing of

— *Imperjuratum Stygiandumque paludem,*
Dii cujus jurare timent & fallere numen.

Deut. 4.
Zanch. de nat.
Dei. I. 1. c. 6.
Reuchl. de
verb. mirif.
I. 2. c. 16.
Psalms 104.
Hebr. I. 7.

Aeneid. 6.

that is,

— **Th' unperjur'd Stygian lake,
Whose name the Gods do fear in vain to take.**

We

We read of the Infants of the *Celts*,

Anthol. s.
Epigr. u.

Κεκενθός αυτογένειος ιασγχημάτης ποταμοῖς.

Try'd in the streams of sacred flood,
Whether of right or of base blood;

Polyhist. l. 1.
c. 10.
Ovid. Fast. 2.
Senec. Ep. 41.

Mart. del Rio
dissq. mag. l. 4.
sccl. 3. & 4.

as it is in the Greek *Epigrams*: of the fountains of *Sardinia*, in *Solinus*: of the moist *Februa*, or purifications by water, in *Ovid's Fastorum*: and of those Rivers that fell from Heaven, and their most wonderful and hidden natures, among Natural Philosophers. But most of these things were not known peradventure in our *Ordeals*. Yet *Martin Del Rio*, a man of various Reading and exquisite Learning, hath in his *Magical Inquiries* offered a conjecture, that the tryal by Water crept into use from a paltry imitation of the *Jews Cup of Jealousie*.

Truth is, a great many instances both of this way of trying by Water and of that by Fire, are afforded by the Histories of the *Danes*, *Saxons*, *Germans*, *Franks*, *Spaniards*, in a word, of the whole Christian World.

Ovid. Fast. 4.

*An quia cunctarum concordia semina rerum,
Sunt duo discordes Ignis & Unda dei,
Junxerunt elementa Patres?*

was it, saith the Poet,

'Cause the two diff'reng Gods,
Alwayes at odds,
That of Water, that of Fire,
Which yet in harmony conspire
The seeds of all things fitly joyn'd;
Therefore our Fathers have these two combin'd.

Pic. Mirandu-
la in Hepta-
plo.

Or was it, because that the Etymologie of the Word *הַשְׁבָּאִים Hassbamim*, that is, *Heaven*, (for the Heavens themselves were the feigned Gods of the Gentiles) some are pleased with the deriving it from *וָיֵם Ejb*, i. e. *Fire* and *וְמַיִם Maim*, i. e. *Water*: Let some more knowing Janus tell you.

Pindar.
Olymp. 3.

— μὴ διάσω· καὶδε τίς.

For my part I shall not this game pursue;
Why should I lose my time and labour too?

Vita Roberti.

Decret. tit. de
vulgar. pur-
gat. cauf. 2.
quaest. 5.

The superstitions and fopperies, the rites and usages, the lustrations and purifyings, the Prayers and Litanies, and the solemn preparations (in consecrating and conjuring the Water, &c.) you have in *Will. Lambard* in his *Explications of Law terms*, and in *Matthew Parker Arch-Bishop of Canterbury* in his *Antiquities of the Brittish Church*. Both of them together, with that other of single *Combat* or *Duel* (for that also was reckoned among the *Ordeals*) were judged by the Church of *Rome* to be impious customs; and it is long since that they have been laid aside, and not put in practice among the common ordinary wayes of peoples purging and clearing themselves.

Well,

Well, now let me come back to my own Country again, and return to Northampton.

C H A P. XVII.

Other Laws: Of entertaining of strangers. An Uncuth, a Guest, a Hogenhine; what of him who confesseth the Murder, &c. Of Frank pledge. Of an Heir under age. Of a Widows Dowry. Of taking the Kings fealty. Of setting a time to do homage. Of the Justices duty. Of their demolishing of Castles. Of Felons to be put into the Sheriffs hands. Of those who have departed the Realm.

68. ‘**I** Et it be lawful for no man, neither in Borough nor in Village or place of entertainment, to have or keep in his house, beyond one night, any stranger, whom he will not hold to right, (that is, answer for his good behaviour) ‘unless the person entertain’d shall have a reasonable Essoin or excuse, which the Master or Host of the house is to shew to his neighbours; and when the Guest departs, let him depart in presence of the neighbours, and in the day time. Hither belongs that of *Bracton*. ‘He may be said to be of ones family, who shall have lodged with another for the space of three nights; in that the first night he may be called **Uncuth**, i.e. Unknown, a Stranger; but the second night **Guest**, i.e. a Guest or Lodger; the third night **Hogenhine** (I read **Hawan man**) i.e. in Greek *ἴουρεγμός*, *σικης*, in Latin *Familiares*, one of the family.

Braet. I. 3:
tract. 2. c. 10.
& Canuti
leges.

69. ‘If any one shall be seised for Murder, or for Theft, or Robbery, or Forgery, and be knowing thereof, (i.e. shall confess it) or for any other Felony which he shall have done, before the Provoost (the Master or Bailiff of the Hundred or Borough, and before lawful men, he cannot deny it afterwards before the Justices. And if the same person without Seisin (with Seisin in this place is the same as *ταυτωσία*, as we commonly say in our Language, taken with the manner) shall recognize or acknowledge any thing of this nature before them, this also in like manner he shall not be able to deny before the Justices.

70. ‘If any one shall dye holding in Frank Pledge (i.e. having a free Tenure) let his heirs remain in such Seisin, as their Father had on the day he was alive and dyed, of his fee, and let them have his Chattels, out of which they may make also the devise or partition of the deceased, (that is, the sharing of his goods according to his will) and afterwards may require of their Lord, and do for their relief and other things, which they ought to do as touching their Fee (i.e. in order to their entring upon the estate.)

71. ‘If

71. 'If the heir be under age, let the Lord of the Fee take his homage, and have him in custody or keeping for as long time as he ought; let the other Lords, if there be more of them, take his homage, and let him do to them that which he ought to do.

72. 'Let the Wife of the deceased have her Dowry, and that part of his Chattels, which of right comes to her. In former times peradventure it was a like generally practised by the *English*, that the Wife and Children should have each their lawful *Thirds* of the estate; (each of them, I say, if they were in being; but half to the Wife, if there were no issue; and as much to the Children, if the Wife did not survive her Husband:) as it was practised by the *Romans* of old according to the *Falcidian Law*, and of later time by the *Novells of Justinian*, that they should have their *Quarter*-part. For I see that those of *Normandy*, of *Arras*, of *Ireland*, people that lay round about them, had the same custom. Of this you are to see *Glanvill*, *Bracton*, the *Register of Briefs* or *Writs*, and *William Lindwood*, beside the Records or yearly Reports of our Law.

73. 'Let the Justices take the Fealties of our Lord the King before the close of *Easter*, and at furthest before the close of *Pentecost*; namely, of all Earls, Barons, Knights and Free-holders, and even of Rusticks or Vassals, such as have a mind to stay in the Realm; and he who will not do fealty, let him be taken into custody as an enemy of our Lord the King.

74. 'The Justices have also this to give in charge, that all those, who have not as yet done their homage and allegiance to our Lord the King, do at a term of time; which they shall name to then, come in and do homage and allegiance to the King as to their Liege Lord.

75. 'Let the Justices do all acts of Justice and rights belonging to our Lord the King by a Writ of our Lord the King, or of them who shall be in his place or stead, as to a half-Knights fee and under; (a Knights fee in an old Book, which pretends to more antiquity by far than it ought, concerning the manner of holding Parliaments, is said to be twenty pounds worth of Land in yearly revenue, but the number prefixt before the Red Book of the Exchequer goes at the rate of Six Hundred and Eighty Acres:) unless the complaint be of that great concern, that it cannot be determined without our Lord the King, or of that nature that the Justices by reason of their own doubting refer it to him, or to those who shall be in his place and stead. Nevertheless let them to the utmost of their ability intend and endeavour the service and advantage of our Lord the King.

76. 'Let the Justices provide and take care, that the Castles already demolished, be utterly demolished, and that those that are to be demolished, be well levelled to the ground. And if they shall not do this, our Lord the King may please to have the judgement of his Court against them, as against those who shew contempt of his Precept.

77. ‘A Thief or Robber, as soon as he is taken, let him be put into
the Sheriffs hands to be kept in safe custody ; and if the Sheriff shall
be out of the way , let him be carried or brought to the next Con-
stable of a Castle, and let him have him in custody, until he deliver
him up to the Sheriff.

78. ‘ Let the Justices according to the custom of the Land, cause in-
quiry to be made of those, who have departed or gone out of the
Realm. And if they shall refuse to return within a term of time that
shall be named, and to stand to right in the Kings Court (*i. e.* to make
their appearance, and there to answer, if any thing shall be brought in
against them) ‘ let them after that be outlawed, and the names of the
‘Outlaws be brought at *Easter* and at the Feast of St. *Michael* to the Ex-
‘chequer, and from thence be sent to our Lord the King.

These Laws were agreed upon at *Northampton*.

C H A P. XVIII.

Some Laws in favour of the Clergy. Of forfeitures on the account of Forest or hunting. Of Knights fees. Who to bear Arms, and what Arms. Arms not to be alienated. No Jew to bear Arms. Arms not to be carryed out of England. Rich men under suspicion to clear themselves by Oath. Who allowed to swear against a Free-man. Timber for building of Ships not to be carryed out of England. None but Free-men to bear Arms. Free-men who Rusticks or Villains not such.

March. Paris.

79. 'T hat henceforth a Clergy-man be not dragg'd and drawn before a Secular Judge personally for any crime or transgression, unless it be for Forest or a Lay-fee, out of which a Lay-service is due to the King, or to some other Secular Lord. This priviledge of the Clergy the King granted to *Hugh* the Popes Cardinal Legate, by the Title of *S. Michael à Petra*, who arrived here on purpose to advance the Popish interest.

80. 'Furthermore, that Arch-Bishopricks, Bishopricks or Abbacies be not held in the Kings hand above a year, unless there be an evident cause, or an urgent necessity for it.

81. 'That the Murderers or Slayers of Clergy-men being convicted, or having confess before a Justice or Judge of the Realm, be punished in the presence of the Bishop.

V. Britton.
cap. d' Ap-
peales, and
temp. Ed. I.
tit. Quod per-
mitat. 9.

82. That Clergy-men be not obliged to make Duel: i. e. not to clear themselves, as others upon some occasion did, by single combat.

83. 'He ordained at *Woodstock* (we transcribe these words out of *Hoveden*) 'that whosoever should make a forfeit to him concerning his Forest, or his hunting once, he should be tyed to find safe Pledges or Sureties; and if he should make a second forfeit, in like manner safe Pledges should be taken of him; but if the same person should forfeit the third time, then for his third forfeit, no pledges should be taken, but the proper body of him who made the forfeit.

Moreover, we meet with these Military Laws, or Laws of *Knights fees*, made for Tenants and other people of the common sort.

84. 'He who hath one Knights fee ('tis the aforesaid *Hoveden* speaks) 'let him have an Habergeon or Coat of Male, and a Helmet or Head-piece and a Buckler or Target and a Lance: and let every Knight have so many Habergeons, and Helmets, and Targets, and Lances, as he shall have Knights fees in his demeans.

85. 'Whatsoever Free-holder that is a Lay-man, shall have in Chattel or

'or in Rent and Revenue to the value of Sixteen Marks, let him have a
'Coat of Male, and a Head-piece, and a Buckler, and a Lance.

86. ' Whatsoever Lay person being a Free-man, shall have in Chattel
' to the value of Ten Marks, let him have a little Habergeon, or Coat
' of Male, and a Capelet of Iron, and a Lance.

87. ' Let all Burghers or Towns-men of a Corporation, and the
' whole Communities of Free-men have a Wambais, and a Capelet of
' Iron, and a Lance.

88. ' Let no one, after he hath once had these Arms, sell them, nor
' pawn them, nor lend them, nor by any other way alienate them from
' himself, or part with them: nor let his Lord alienate them by any
' manner of way from his man (*i. e.* his Tenant that holds under him)
' neither by forfeit, nor by gift, nor by pledge, nor by any other way.

89. ' If any one shall dye having these Arms, let them remain to
' his heir; and if the heir be not of such estate or age, that he may use
' the Arms, if there shall be need, let that person who shall have
' them (the heir) in custody, have likewise the keeping of the Arms,
' and let him find a man, who may use the Arms in the service of our
' Lord the King, if there shall be need, until the heir shall be of such
' estate, that he may bear Arms, and then let him have them.

90. ' Whatsoever Burgher shall have more Arms, than it shall be-
' hove him to have, according to this Assize, let him sell them, or give
' them away, or so dispose of them from himself to some other man,
' who may retain them in *England* in the service of our Lord the
' King.

91. ' Let no one of them keep by him more Arms, than it shall be-
' hove him according to this Assize to have.

92. ' Let no Jew keep in his possession a Coat of Male or an Haber-
' geon, but let him sell them, or give them, or in some other manner
' put them away, in that wise that they may remain in the service of
' the King of *England*.

93. ' Let no man bear or carry Arms out of *England*, unless it be
' by special order of our Lord the King; nor let any one sell Arms to
' any one, who may carry them from *England*; nor let Merchant or
' other carry or convey them from *England*.

94. ' They who are suspected by reason of their wealth or great
' estate, do free or acquit themselves by giving their Oaths. The
' Justices have Power or Jurisdiction given them in the case for this pur-
' pose. ' If there shall be any, who shall not comply with them (the
' Justices) ' the King shall take himself to the members or limbs of such
' persons, and shall by no means take from them their Lands or
' Chattels.

95. 'Let no one swear upon lawful and free-men, (i. e. in any matter against or concerning them) who hath not to the value of Sixteen or Ten Marks in Chattel.

96. 'Let no one, as he loves himself and all that he hath, buy or sell any Ship to be brought from *England*; nor let any one carry, or cause to be carried out of *England* Timber for the building of Ships.

97. Let no one be received or admitted to the Oath of bearing Arms but a Free-man.

To bring once for all something concerning a *Free man*, that may not be beside the purpose. The ancient Law of *England* bestowed that name only upon such persons, as many as, either being honoured by the Nobility of their Ancestors, or else out of the Commonalty being of ingenuous Birth (to wit, of the Yeomanry) did not hold that rustick see or Tenure of Villenage dedicated to *Stercutius* (the God of Dunghils) and necessarily charged and burthened with the Plough tail, the Wain, and the Dray, which are the hard Countrey-folks Arms and Implements. To this purpose makes the term of *Rustick* or *Countrey-man* above mentioned in the Statutes of *Clarendon*, and the place of *Glanvill* cited in the Tryal of *Ordeal*.

Temp.
Ed. I. tit.
Attorney,
163.

That the busines may be more clearly asserted; a Suit of Law being waged in the time of *Edward* the First, betwixt *John Levin* Plaintiff and the Prior of *Berewell* Defendant (I have taken the Story out of an old Manuscript, and the Reports of our Law, and the Collection or Body of the Royal Rescripts do agree to it) it was then, after several disputes bandied to and fro, and with earnestnes enough, decided by the judgement of the Court, that those Tenants which hold in fee from the ancient Domain of the Crown, as they call it, are by no means comprehended under the title of *free-men*; as those who driving their labour around throughout the year pay their daily Vows to *Ceres* the Goddess of Corn, to *Pales* the Goddess of Shepherds, and to *Triptolemus* the Inventer of Husbandry or Tillage, and keep a quarter with their Gee Hoes about their Chattel.

And now death hath put an end to King *Henry's* Reign. And I also having made an end of his Laws, so far as Histories do help me out, do at the last muster and arm my Bands for the guard of my Frontiers. I wish they may be of force enough against Back-biters.

C H A P. XIX.

Of Law-makers. Our Kings not Monarchs at first. Several of them in the same County. The Druids meeting-place where. Under the Saxons, Laws made in a general Assembly of the States. Several instances. This Assembly under the Normans called Parliament. The thing taken from a custome of the ancient Germans. Who had right to sit in Parliament. The harmony of the Three Estates.

But however Laws are not without their Makers and their Guardians, or they are to no purpose. It remaineth therefore that we say somewhat in general of them. They are made either by Use and Custom (for things that are approved by long Use, do obtain the force of Law) or by the Sanction and Authority of Law-givers. Of ancient time the Semnothei, the Kings and the Druids were Law-givers; amongst the Britans I mean.

Concerning the Semnothei whatsoever doth occur you had before.

The Kings were neither Monarchs of the whole Island, nor so much as of that part of Brittany that belonged to the Angles. For there were at the same time over the single County of Kent four Kings; to wit, Cyngutorix, Carvilius, Taximagulus, and Segonax; and at the same rate in other Counties. Wherefore we have no reason to make any question, but that part wherein we live, now called England, was governed by several persons, and was subject to an Aristocracy: according to what Polydore Virgil, John Twine, David Powell and others have informed us.

The Druids were wont to meet, to explain the Laws in being, and to make new ones as occasion required, as is most likely, in some certain place designed for that purpose; as now at this very time all matters of Law go to be decided at Spire in Germany, at Westminster-Hall in England, and Paris in France.

Their publick Convention or Meeting-place was constantly, as Julius Cesar tells us, in the borders of the Carnutes the middle Region of all France. Some think that a Town at eight Miles distance from the Metropolis of those people commonly called Dreux, was designed for that use.

Whilst the Saxons governed, the Laws were made in the General Assembly of the States or Parliament. In the front of King Ina's Laws ('tis above Eight Hundred and Eighty years that he first reigned) we read thus, *It Ine mid godes gift West-Saxna Cyning mid getheat & mid lere Centredes mines fader & hedde & Erconwald mine biscops & mid eallum minum, ealdoꝝ mannum, & tham yldestan Witan mines theode be beodeth, &c.* which in our present English speaks thus, *I Ina by the Grace of God King of the West-Saxons, by the advice and order of Kenred my Father, and of Hedda and Erconwald my Bishops, and of all my Aldermen, and of the Elders and Wise Men of my people, do command, &c.* There are a great many instances of this kind in other places. Moreover Witlaf and Bertulph, who were Kings of the Mercians

Polyd. hist.
Angl. 2.
Tuin. Com. de
reb. Albion.
Dav. Pouet. in
Eduſt. Gult.
Flattwode.

Caf. 1. 5. de
belli. Gall.

Paul. Merula.

Inglipht.

ans

Camden.

Polyd. hist.
Angl. l. 11.Mod. ten.
Parl.Jo. Caius An-
tiqu. Canta-
brig. l. 1.V. 22 Ed. 3.
fol. 18.August. de civ.
Det. l. 2. c. 21.

ans near upon Eight hundred years ago, do in their instruments under
 'their hands make mention of Synods and Councils of the Prelates and
 'Peers convened for the affairs of the Kingdom. And an ancient Book
 has this passage of *Abendon*, 'Here was the Royal Seat, hither when they
 'were to treat of the principal and difficult points of State, and affairs of
 'the Kingdom, the people were used to meet and flock together. To
 this may be added that which *Malmesbury* sayes of King *Edward* in the
 year of our Lord 903. 'The King gathered a Synod or Assembly of the
 'Senators of the *English* Nation, over which did preside *Pleimund* Arch-
 'Bishop of *Canterbury* interpreting exprefly the words of the Apostolical
 'Embassy. These Assemblies were termed by the *Saxons*, *Wicena*
gemcder, i. e. Meetings of the Wise Men, and *Wicil sinōter*, i. e. the
 Great Assemblies. At length we borrowed of the *French* the name of
Parliaments, which before the time of *Henry* the First, *Polydore Virgil*
sayes, were very rarely held. An usage, that not without good reaſon
seems to have come from the ancient *Germans*. So *Tacitus* sayes of them,
'Concerning ſmaller matters the Princes only, concerning things of
'greater concern, they do all the whole body of them conſult; yet in
'that manner, that thofe things alſo, which it was in the peoples power
'to determine, were treated of by the Princes too. And I have one that
hath left it in writing, 'that when there was neither Bishop, nor Earl,
'nor Baron, yet then Kings held their Parliaments: and in King *Arthur's*
Patent to the University of *Cambridge* (for ye have my leave, if you can
find in your heart, to give credit to it, as *John Key* does) 'by the coun-
fel and aſſent of all and ſingular the Prelats and Princes of this Realm,
'I decree.

There were present at *Parliaments*, about the beginning of the *Nor-*
mans times, as many as were invested with Thirteen Fees of Knights ser-
vice, and a third part of one Fee, called *Baron's*, from their large Estates:
for which reaſon perhaps *John Cochleius of Mentz*, in his Epiftle Dedi-
tory to our moft Renowned Sir *Thomas More*, prefxt before the Chronicle
of *Aurelius Caffiodorus*, calls him *Baron of England*. But *Henry* the
Third, the number of them growing over big, ordered by Proclamation,
that thofe only ſhould come there, whom he ſhould think fit to ſummon
by Writ.

These Assemblies do now ſit in great State, which with a wonderful
harmony of the Three Estates, the *King*, the *Lords* and the *Commons*,
or Deputies of the People, are joyned together, to a moft firm ſe-
curity of the publick, and are by a very Learned Man in allusion to that
made word in *Livy*, *Panatolum* from the *Aetolians*, moft rightly called
Pananglum, that is, *all England*. 'As in Musical Instruments and Pipes
'and in Singing it ſelf, and in Voices (ſayes *Scipio* in *Tully's* Books of the
Common-wealth) 'there is a kind of harmony to be kept out of diſtinct
'sounds, which Learned and Skilful Ears cannot endure to hear changed
'and jarring; and that conſort or harmony, from the tuning and orde-
'ring of Voices moft unlike; yet is rendred agreeing and ſuitable: ſo
'of the highest and middlemoft and lowermoft States ſhuffled together,
'like different sounds, by fair proportion doth a City agree by the con-
'ſent of persons moft unlike; and that which by Musicians in ſinging is
'called *Harmony*; that in a City is *Concord*, the straightest and ſureſt
'bond of safety in every Common-wealth, and ſuch as can by no means
'be without Justice.

But let this ſuffice for *Law-makers*.

C H A P.

C H A P. XX.

The Guardians of the Laws, who. In the Saxons time seven Chief. One of the Kings among the Heptarchs styled Monarch of all England. The Office of Lord High Constable. Of Lord Chancellor, ancient. The Lord Treasurer. Alderman of England, what. Why one called **Hælfkoning**. Aldermen of Provinces and Graves, the same as Counts or Earls and Viscounts or Sheriffs. Of the County Court, and the Court of Inquests, called Tourn le Viscount. When this Court kept, and the original of it.

I Do scarce meet before the *Saxons* times with any Guardians of the Laws different from these Law-makers. In their time they were variously divided, whose neither Name nor Office are as yet grown out of use. The number is made up, to give you only the heads, by these; to wit, the King, the Lord High Constable, the Chancellor, the Treasurer, the Alderman of England, the Aldermen of Provinces and the Graves. Those of later date and of meaner notice I pass by, meaning to speak but briefly of the rest.

The King was always one amongst the Heptarchs or seven Rulers, who was accounted (I have Beda to vouch it) the Monarch of all England. ‘Ella King of the South-Saxons (so sayes Ethelwred) was the first that was dignified with so high a Title and Empire, who was ‘Owner of as large a Jurisdiction as Ecbricht; the second was Ceulin ‘King of the West-Angles; the third Æthelbrith King of the Kentish-men; the fourth Redwald King of the Easterlings; the fifth Edwin King of Northumberland; the sixth Oswald; the seventh Osiveo, Oswala’s Brother; after whom the eighth was Ecbricht. His West-Saxon Kingdom took in the rest for the greatest part.

The Office of Lord High Constable, which disappeared in Edward Duke of Buckingham, who in Henry the Eighth’s time lost his Head for High-Treason, was not seen till the latter end of the *Saxons*. One Alfgar Staller is reported by Richard of Ely Monk, to have been Constable to Edward the Confessor, and Mr. Camden mentions a dwelling of his upon this account called Plaissy in the County of Middlesex. He of Ely sets him out for a Great and Mighty Man in the Kingdom. And indeed formerly that Magistrate had great power, which was formidable even to Kings themselves.

They who deny there were any Chancellors before the coming in of the Normans, are hugely mistaken. Nor are they disproved only out of the Grant of Edward the Confessor to the Abbot of Westminster, which I am beholden to Mr. Lanbard for, at the bottom of which these words are set down: *I Syward Publick Notary, instead of Rembald the Kings Majesties Chancellor, have written and subscribed this paper; but also out of Ingulph, who makes mention of Turketulus, some while after that Abbot of Croxland, Chancellor of King Edred, ‘by whose Decree and Counsel*
‘were

Ethelwred.
l. 3. c. 2.

Hist. Elien.

Camd. in
Northampt.
V. Kel. relat.
6 Hen. 8. fol.
171. Stat.
13 Rich. 2. c. 2
Math. Paris,
pag. 563.
Brook tit.
Prerogative.
31.

Fr. Thin. in
contin. Chr.
Eliz.

were to be handled & treated whatsoever busineses they were, Temporal or Spiritual, that did await the Judgement of the King; and being thus treated of by him, might irrefragably stand good. And *Francis Thin*, that Learned Antiquary has reckoned up several, who have discharged this Office; as *Turketill* to King *Ethelbald*, *Swithun* Bishop of *Winchester* to King *Egbert*, *Ulf* to King *Athelstan*, *Adulph* to King *Edgar*, *Alfr* Abbot and Prelate of *Ely* to King *Ethelred*. Concerning which Office and the Seals, which the *Chancellor* in old time had the keeping of, I had rather you would consult with *Camden's Tribunals or Seats of Justice*, and those things which *John Budden* at *Wainfleet Doctor of Laws* has brought out of the *Archives* into his *Palingenia*, than seek them at my hands.

Manh. Cant.
in Odonis se-
veritatis.

As for *Treasurers*, *Dunstan* was so to King *Edred*, and *Hugolin* to the *Confessor*.

Camden.

But that fifth title of *Alderman of England*, is an unusual one. Yet, if I don't mistake my self, he was the Chief President in Tryals at Law, and an Officer to keep all quiet at home; the same as now perhaps is commonly called the *Lord Chief Justice of England*. This remarkable name I do not meet with, neither in the *Monkish Chronologers*, which are to be had at the Shops, nor in the *Records of our Laws*. But a private History of the Abbey of *Ramsey* in *Huntingdonshire* has given us notice of one *Ailwines* Tomb with this Inscription,

HIC. REQUIESCIT. AILWINUS. INCLITI.
REGIS. EADGARI. COGNATUS. TOTIUS. AN-
GLIAE. ALDERMANNUS. ET. HUJUS. SACRI.
COENOBII. MIRACULOSUS. FUNDATOR.

Huntingd.
hist. l. 6.

that is, *Here resteth Ailwin Kinsman of the Renowned King Edgar, Alderman of all England, and the miraculous Founder of this Sacred Monastery*. And by reason of his great Authority and Favour which he had with the King, by a Nick-name they called him *Healshkoning*, i.e. *Half-King*. Now *Henry of Huntingdon* fayes, that *Toftius* Earl (or to use his phrase *Consul*) of *Northumberland*, and *Harald Sons of Godwin* Earl of *Kent* were *Justices of the Realm*.

Camden.

Aldermen may aptly be termed by the word *Senators*. Those Judges did exercise a delegated power throughout the Provinces, called *Counties* or *Shires*, and the *Graves* an under-delegated power from them. The word is as much as *Governours*, and is the same thing, as in High Dutch *Grabe* in *Landgrabe*, *Burggrabe*, *Palsgrabe*, &c. and what amongst some of our own people *Reeb*. We shall call them both, as that Age did, in a *Latin* term, the one *Comites*, i.e. Counts or Earls, the other *Vicecomites*, that is, *Viscounts* or *Sheriffs*.

The name of *Count* is every where met with amongst the most ancient of the Monks, which yet does very often pass into that of *Duke* in the subscription of Witnesses. And in the Charter of the Foundation of *Chertsey Abby* in *Surrey*, *Frisbwald* styles himself *subregulus*, i.e. an under Kingling or petty Vice-Roy to *Wulpher* King of the *Mercians*; make no question of it, he meant he was a *Count*.

A *Viscount* and a *Vice-Lord* are more than very like, they are the very same. *Ingulph* fayes it above. ‘And in the last hand-writing of King *Edred* we have, I *Bindulph* Vice-Lord advised it, I *Alfer* Viscount heard it.

These

These *Counts* and *Viscounts*, or *Earls* and *Sheriffs* had in their *Counties* their several *Courts* both for private and for publick matters. For private affairs they had every Month a Meeting called the **County Court**. ‘Let every *Grave*, as we have it in *Edward* the Elder’s Laws, every fourth Week convene and meet the people in Assembly; let him do equal right to every one, and determine and put an end to all Suits and Quarrels, when the appointed days shall come. For publick business King *Edgar* ordered the *Court of Inquests* or Inquiries, called **Tourn le Viscount**. ‘Let a Convention or Meeting be held twice every year out of every County, at which let the Bishop of that Diocese, and the Senator, (*i. e.* the Alderman) be present; the one to teach the people the Laws of God; the other the Laws of the Land. What I have set down in *William* the First at the end of the fourth Chapter of this second Book, you ought to consider here again in this place.

The inhabitants did not meet at this *Court of Inquests* at any season promiscuously and indifferently, but as it is very well known by the use and ancient Constitutions of the Realm, within a Month either after *Easter*, or after *Michaelmas*. In which Court, seeing that not only the *Count*, as now a dayes the *Viscount* or *Sheriff* does, but also the *Bishop* did preside; it does not at all seem difficult to trace the very original of this temporary Law. That peradventure was the Synod of *Antioch* held in Pope *Julius* the First’s time, and acknowledged in the sixth General Council held at *Constantinople*. In this latter there are expressly and plainly two Councils or Meetings of the Bishops to be kept every year within three Weeks after *Easter*, and about the middle of *October*, (if there be any small difference in the time, it can be no great matter of mistake). You may help your self to more other things of meane note out of what has been said before about *Hundreds*, *Bourghs* and the like.

And this may serve in brief for the *Saxons*, who were entrusted with the care of their Laws.

Leg. Edw. 5.
& Canut. 17.

Leg. Edgar.
cap. 11.

Synod. Anti-
och. c. 20.

Dist. 18. c. 4.

C H A P. XXI.

*Of the Norman Earls. Their Fee. Their power of making Laws.
Of the Barons, i.e. Lords of Manours. Of the Court Baron.
Its rise. An instance of it out of Hoveden. Other Offices much
alike with the Saxons.*

I Shall be briefer concerning the *Normans*, I mean their *Earls* and *Barons*.

Their *Counts* or *Earls* before the Conquest, except those of *Leicester*, and perchance some others, were but Officers, and not as yet hereditary. When *William* bore the sway, they began to have a certain Fee and a descent of Patrimony; having together with their Title assigned to them a third part of the Revenues or Rents, which did arise out of the whole County to the Exchequer. This custom is clear enough in *Gervase of Tilbury* in the case of *Richard de Redueris* made Earl of *Devonshire* by *Henry* the First, & *Geoffrey de Magna Villa* made Earl of *Essex* by *Maud* the Empress. It seems that the *Saxon* Earls had the self-same right of sharing with the King. So in *Doomsday Book* we find it; ‘The Queen *Eadwina* had ‘two parts from *Ipswich* in *Suffolk*, and the Earl or Count *Guert* the third: ‘and so of *Norwich*, that it paid Twenty Pound to the King, and to the ‘Earl Ten Pound: so of the Revenues of the Borough of *Lewes* in ‘*Sussex*, the King had two shares, and the Earl the third. And *Oxford* ‘paid for Toll and Gable, and other customary Duties Twenty Pound ‘a year to the King, besides Six Quarts of Honey, and to Earl *Algar* ‘Ten Pound.

To conclude, it appears also that these *Norman* Earls or Counts had some power of making Laws to the people of their Counties. For instance, the Monk of *Malmesbury* tells us, ‘that the Laws of *William Fitz-Osborn* Earl of *Hereford* remained still in force in the said County, that ‘no Souldier for whatsoever offence should pay above Seven Shillings. The Writings and Patents of the men of *Cornwall* concerning their Stanaries or Tinn-Mines do prove as much; nor need I tell the story, how *Godiva* Lady to the Earl *Leofrick* rid on Horse-back through the Streets of *Coventry* with her hair dishevelled, all hanging about her at full length, that by this means she might discharge them of those Taxes and Payments, which the Earl had imposed upon them.

*Malmesb. de
gest. reg. 1. 3.*

*Ad leg. 2. de
origin. jur.*

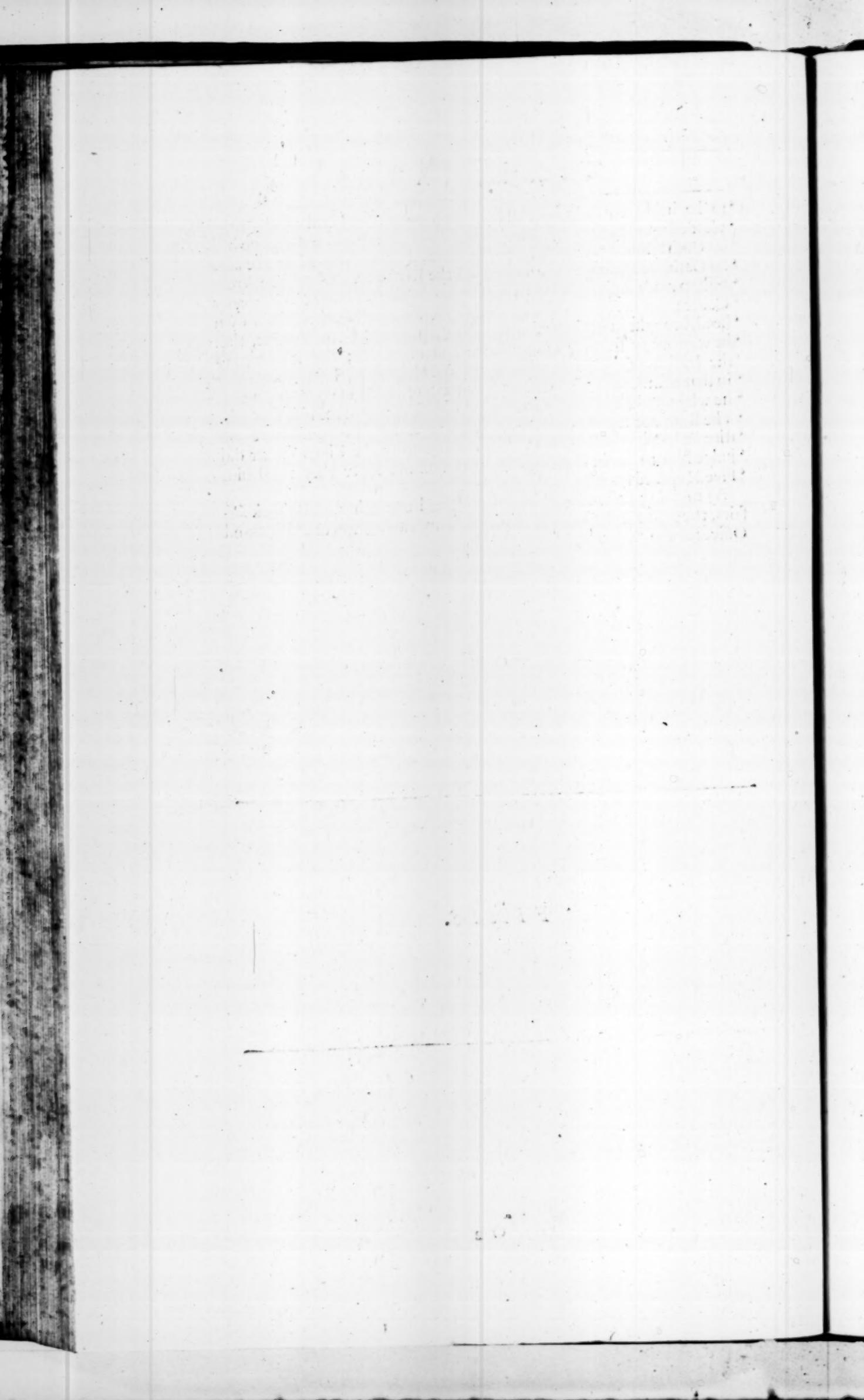
*Roger de Ho-
veden in H. 2.*

Out of the Countreys (wherein all Estates were subject to Military Service) the *Barons* had their Territories, as we call them *Manors*; and in them their Courts to call their Tenants together, at the end of every three Weeks, and to hear and determine their Causes. A Civilian, one *Udalricus Lazarus*, would have the original of these Courts among other Nations, to have come by way of imitation from *Romulus* his making of Lords or Patrons, and their Clans or Tenants. The use of them at this day is common and ordinarily known. But to shew how it was of old, we will borrow out of *Hoveden* this spark of light. ‘*John Marshall* complained to *Henry* the Second, that whereas ‘he had claimed or challenged in the Arch-Bishops Court a piece of Land ‘to

‘to be held from him by right of inheritance, and had a long time
‘pleaded upon it, he could obtain no Justice in the case, and that he had
‘by Oath falsified the Arch-Bishops Court, (that is, proved it to be false
‘by Oath, according to the custom of the Realm: to whom the Arch-
‘Bishop made answer, There has been no Justice wanting to *John* in my
‘Court; but he, I know not by whose advice, or whether of his own
‘head, brought in my Court a certain *Coper*, and swore upon it, that
‘he went away from my Court for default of Justice; and it seemed to
‘the Justices of my Court, that he did me the injury, by withdrawing
‘in that manner from my Court; seeing it is ordained in your Realm, that
‘he who would falsifie another’s Court must swear upon the holy Gospels.
‘The King not regarding these words, swore, that he would have Ju-
‘stice and Judgement of him; and the Barons of the Kings Court did
‘judge him to be in the Kings Mercy; and moreover they fined him
‘Five Hundred Pound.

As to doing Justice in all other Cases, and managing of Publick Af-
fairs, the *Normans* had almost the same Names and Titles of Officers and
Offices as the *Saxons* had.

F I N I S.





A Brief
CHRONOLOGY
 TO
 Attend and Assist
 THE
HISTORY.

In the Year of the
 W O R L D.

1910.	<i>Samobes</i> , if there ever were such a man, bears rule.
2805.	<i>Brutus</i> makes a descent, (that is, lands with his <i>Trojans</i>) in Cornwall or Devonshire.
3516.	<i>Dunvallo Molmussius</i> swayes the Scepter.
3627.	<i>Martia</i> , Dowager of King <i>Quintilen</i> , is Queen Regent during the Minority of her Son <i>Sisillius</i> the First.

Caius

3942.

Lucan.

Caius Julius Caesar arrives at Deal on the Sea-Coast of Kent, and

Territa quæ sitis offendit terga Britannis,

that is,

*Habing inquiry made,
After the Britans bold,
He turn'd his back, 'tis said,
His courage would not hold:*

and was the first that discover'd *Britannia* to the *Romans*.

In the Year of
C H R I S T.

44.

Claudius Caesar Emperour sends over *Aulus Plautius* with an Army as his Lieutenant General, and by degrees reduceth the Countrey into the form of a *Roman Province*.

52.

A Colony of Veterans or old *Roman* Souldiers is sent down to *Maldon* in *Essex*.

86.

Britannia is subdued or brought under the yoke by the Conduct of *Junius Agricola*, in the time of *Domitian* the Emperour.

183.

Lucius or King *Lutyc* was the first Christian King. Forasmuch as he was of the same standing with Pope *Eleutherius* and the Emperour *Commodus*. Whence it appears, that *Beda* makes others mistake, and is himself mistaken in his wrong account of time in this affair.

428.

The *Saxons*, *Angles*, *Jutes*, *Danes*, *Frisians*, or *Frislanders* arrive here from *Germany*, *Taurus* and *Felix* then Consuls, in the one and twentieth year of *Theodosius* the younger. The common or ordinary account of Writers sets it down the four hundred forty ninth year: but that great man both for Authority and Judgement *William Camden Clarenceaux* King at Arms hath, upon the credit of ancient Records, closed this Epoch or Date of time within that term of years, which I have set in the Margin.

561.

King *Ethelbert* the First King of the *English Saxons*, who profest Christianity.

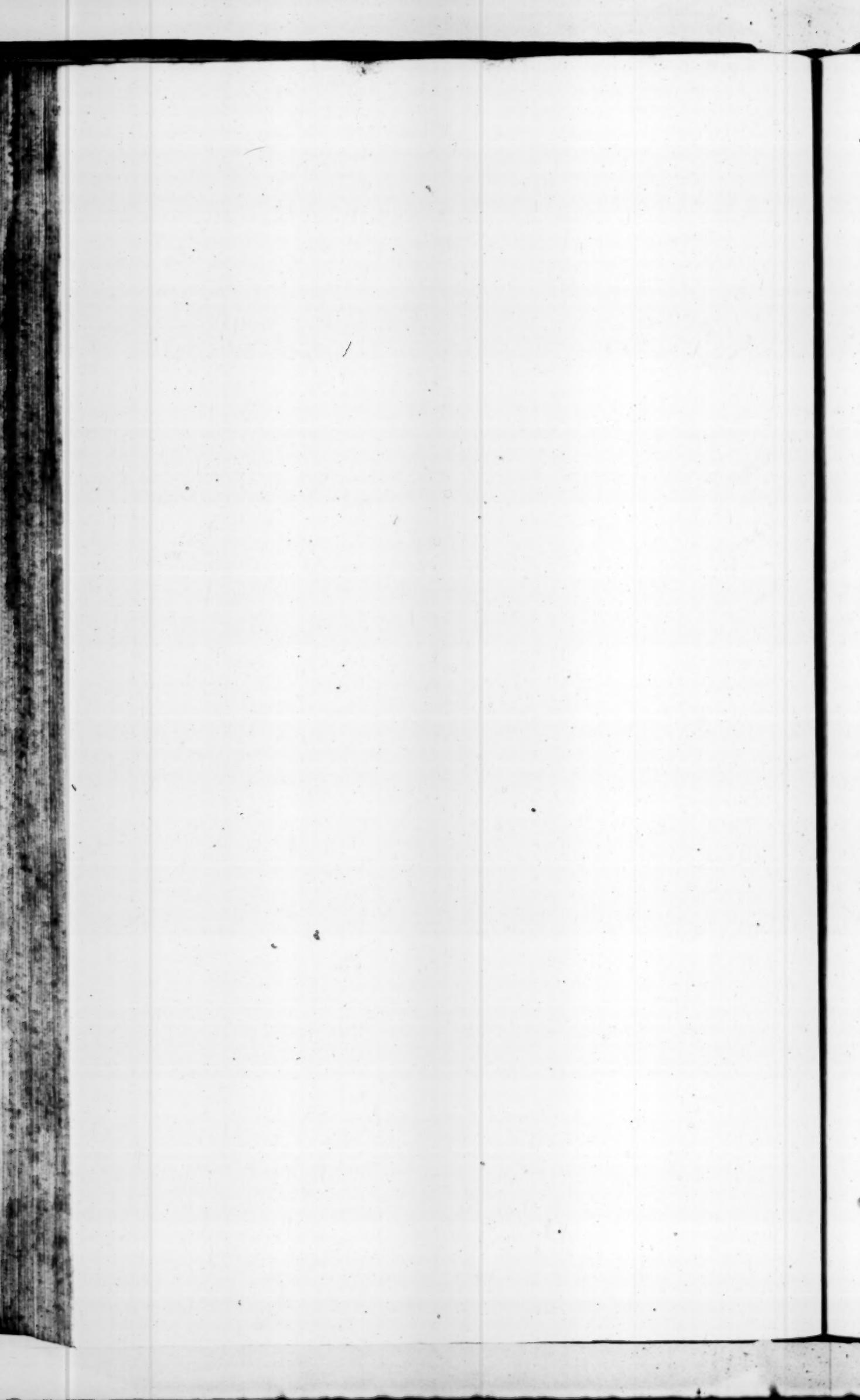
800.

King *Egbert*.

King

872.	King <i>Alured</i> or <i>Alfred</i> .
959.	King <i>Edgar</i> .
1017.	<i>Canute</i> or King <i>Knute</i> the <i>Dane</i> .
1036.	<i>Harold</i> , eldest Son to King <i>Knute</i> , called for his swiftnes <i>Harefoot</i> .
1042.	<i>Edward the Confessor</i> , after whom <i>Harold</i> Son to <i>Godwin</i> Earl of <i>Kent</i> usurp't the Throne, where he continued only nine Months.
1066.	<i>William</i> Duke of <i>Normandy</i> , after a Battel fought upon the Plain near <i>Hastings</i> , got the Dominion or Soveraignty of the <i>British</i> Island.
1088.	<i>William Rufus</i> , second Son of the Conquerour.
1100.	<i>Henry</i> the First, younger Brothor to <i>Rufus</i> .
1135.	King <i>Stephen</i> , Count of <i>Blois</i> in <i>France</i> , Nephew to <i>Henry</i> by his Sister <i>Adela</i> .
1153.	<i>Henry</i> the Second, Grand-child to <i>Henry</i> the First by his Daughter <i>Maud</i> the Empress, and <i>Geoffrey</i> Count of <i>Angers</i> in <i>France</i> .

F I N I S.





BRIEF
NOTES
UPON
Some of the more Difficult Passages
IN THE
TITLE-PAGE.



Common and Statute Law] So I render *Jus Prophanum*, as *Prophane* is opposed to *Sacred* and *Ecclesiastical*, as himself explains the term in his Preface out of *Festus*. Otherwise it might have been render'd *Civil Law*, as relating to Civil affairs and the Government of State, not meddling with the Canons and Rules of the Church; but that the *Civil Law* with us is taken generally in another sense for the *Imperial Law*, which however practised in several other Nations, hath little to do in *England*, unless in some particular cases.

Of English Britanny] that is, that part of *Britain*, which was inhabited by the *Angles*, in *Latin* called *Anglo-Britannia*, by us strictly *England*; as for distinction, the other part of the Island, *Wales*, whither the *welsh*, the true and ancient *Britans*, were driven by the *Saxons*, is called *Cambro-Britannia*, that is, *Welsh Britanny*; and *Scotland* possest by the *Scots*, is in like manner called *Scoto-Britannia*, that is *Scotch-Britanny*, which now together with *England*, since the Union of the two Kingdoms, goes under the name of *Great Britain*.

In the Author's PREFACE.

The Guardian of my Threshold.] So *Limentinus* among the Romans was the God of the Threshold, *qui limentis*, i. e. *liminibus praest*; but it may be taken for the Officer of the Gate, the Porter, who gives admission to strangers.

In a different Character.] Accordingly in the *Latin* the Author's Citations are printed in *Italick*; which, because they are so frequent, I thought fit rather to notice by a distinction, as usual, in the Margin; thus, ““

Intercidona, Pilumnus & Deverra.] These were Heathen Deities, to whom they attributed the Care of their Children, whom else they thought *Silvanus* might, like *Oberon* King of the Fairies, surprize or do some other mischief to.

In the FIRST BOOK.

C H A P. I.

Pag. 2. lin. 23. *Among the Celts and Gauls]* Who are reckoned for one and the same people; as for instance, those *Gauls*, who removed into the *Lesser Asia*, mixing with the *Greeks*, were called *Gallo-Graci*, but by the *Greeks* were styled *τανάρι*, whence by contraction, I suppose *Kērtas*.

L. 41. *Bellagines, that is, By-Laws.]* From *By*, that is, a Village, Town or City, and *Lagen*, which in *Gothiſh* is a Law; so that it signifies such Laws, as Corporations are govern'd by. The *Scots* call them *Burlaws*, that is, Borough-Laws. So that *Bellagines* is put for *Bilagines* or *Burlagines*. This kind of Laws obtains in Courts *Leet* and Courts *Baron*, and in other occasions, where the people of the place make their own Laws.

C H A P. II.

Pag. 4. l. 7. *Adrastia, Rhamnusia & Nemesis.]* Which is all but *Nemesis* the Goddess of Revenge, called *Adrastia* from King *Adrastus*, who first built her a Temple; and *Rhamnusia* from *Rhamnus* a Village in the Athenian Territory, where she was worshipped.

L. 42. *Elohim, that is, Gods.]* And so Judges are properly called according to the original notation of the word, whose Root אֱלֹהִים *aloh*, though in *Hebrew* it signifie to curse, yet in the *Arabick Language*, a descendent of the *Hebrew*, it betokens to judge. Thus 'tis said in the *Psalms*, *God standeth in the Congregation of the Gods*, and *I have said, Ye are Gods, &c.*

L. 45. *It subjoins to it the name of God.]* To wit, that Name of his אֵל *El*, which signifies a mighty God. In this sense the *Cedars of God* are lofty stately Cedars; and by *Moses* his being *fair to God*, is meant, that he was exceeding fair.

Pag. 5. lin. 18. *Not only Berecynthia, but also Juno, Cybele.]* Why! *Cybele* is the very same Goddess, who was called *Berecynthia* from *Berecynthia*

cynthus a Hill of Phrygia (as also Cybelus was another) where she was worshipped. And she had several such Names given her from the places of her worship, as Dindymene, Pessinuntia, Idea, Phrygia. This then was a slip of our worthy Author's memory or his haste.

C H A P. III.

Pag. 5. lin. 34. *Not by the number of dayes, but of nights.*] Thus in our common reckoning we say a **Sennight**, that is, *seven nights*; **septuaginta**, for what in Latin they say *septimana*, *seven mornings*; and a **fortnight**, that is, *fourteen nights*. Again for *Sundayes* and *Holy-dayes*, the Evening, which concludes the fore-going day, is said to be their **Eve**, that is, *Evening*. And the Grecians agree with us in setting the night before the day, in that they call the natural day, which is the space of twenty four hours, comprehending day and night, *Nuxēsēs*, *Night-day*, not *Day-night*.

C H A P. IV.

Pag. 6. lin. 22. *King Phranicus.*] It is so ordinary a matter for Historians, when they treat of things at great distance of time, to devise Fables of their own, or take them up from others, that I doubt not but this *Phranicus* was designed to give name to *France*; whereas it was so called from the *Franks*, who came to plant there out of *Franconia* a Countrey of Germany, called *East-France*.

L. 29. *With Corinus one of the chief of his company.*] From whom Cornwall had its name, formerly called in Latin *Corinia* or *Cornavia* (say some) now *Cornubia*. And possibly if that were so, *Corinium* also or **Cirencester**, a Town in *Glocestershire*, and *Corinus* too, the River *Churne*, that runs by it, owe their appellations to the same Noble person.

L. 31. *New Troy, that is, London.*] Called also *Troynovant*, and the people about it called *Trinobantes* or *Trinovantes*, from whom also the City it self was styled *Augusta Trinobantum*, that is, the Royal Seat of the New *Trojans*.

L. 40. *King Belin.*] Who gave name to **Billingsgate**, that is, *Belin's Gate*, as King *Lud* to **Ludgate**.

Pag. 8. lin. 39. *Eumerus Messenius.*] Some such fabulous Writer as our Sir *John Mandevil*, who tells us of People and Countreys, that are no where to be found in the World.

C H A P. VI.

Pag. 9. lin. 19. *In the time of Brennus and Belinus.*] The first of these was General of the Gauls, who were called *Senones*, and going into *Italy* with them, fackt *Rome*. There he built the City *Verona*, called by his Name *Brennona*; as he had done *Brennoburgum* now **Bandenburg** in Germany. From his prowess and famed Exploits, it is supposed that the *Britans* or *Welsh* do to this day call a King *Brennin*. Of the other, *viz.* *Belinus*, some mention hath been made already.

C H A P. VII.

Pag. 10. lin. 24. *Locrinus, Camber and Albanaetus.*] From the first of these three Brethren, to wit, *Locrinus*, it is said, that the *Welsh* call *England Lloegr*, that falling to the eldest Sons share; from the second *Camber*, that a *Welsh*-man is named *Cumra*, and the Countrey *Cambrisia*;

bria; and from the third *Albanactus*, that *Scotland*, or at least good part of it retains the term of *Albania*, a title still belonging to the King of Britain's second Brother, the Duke of York. Though for my part for this last name of *Albanactus* I am somewhat of opinion, that it might be devised by some smattering Monk purposely in favour of the *Trojan Story*, as much as to say in a mungrel word *Alba* ἀλβή King of *Alba*, a City of *Italy* built by one of *Aeneas* his Sons.

L. 29. *Gavelkind.*] From the *Saxon* *gafel* or *gafol*, a Debt or Tribute, and *tyn* or *kynd*, the Kindred or Children; or, as Mr. *Lambard*, *gis eal cyn*, i. e. given to all who are next of Kin; or, as *Vorstegan*, *give all kind*, i. e. give to each Child his part. An ancient custom of the *Saxons*, whereby the Fathers Estate was equally divided amongst his Sons; as it is still amongst the Daughters, if there be no Sons. It obtains still in several places, especially in *Kent* by the concessions of the Conqueror.

Pag. 11. lin. 22. *The Laws of second Venus.*] Not having *Plato* by me, nor any other means to inform my self better, I imagine that by the *first Venus* they mean the force of Lust and Beauty, which doth so naturally incline people to a desire of union and copulation; and by the *second Venus* consequently is intended that prudential reason, by which men according to wholesome and equal Laws easily suffer themselves to be gathered into Societies, and to comply with one another in mutual indearments.

P. 12. lin. 12. *Jupiter's Register.*] Δίδης θεοπά in the Greek Proverb, is the skin of that Goat, which nursed him in his Childhood, of which after her Death in honour of her memory, and reward of her services, he made his Register, to enroll therein and set down upon record all the concerns of mankind.

Lin. 15. *Of some Aethalides.*] He was the Son of *Mercury*, and had the privilege allowed him to be one while among the living, another while among the dead, and by that means knew all that was done among either of them. The Moral is plain, that he was a great Scholar, who what with his refin'd meditation and study of Books, which is being among the dead, and what by his conversation with men, had attained great knowledge and prudence: So that *Pythagoras* himself, as modest as he was to refuse the Title of *Wise man*, and to content himself with that of a *Philosopher*, that is, a Lover of Wisdom, yet was fond of the counterfeit reputation of being thought to be He, giving out according to his own Doctrine of *Transmigration*, that he was the man.

C H A P. IX.

P. 14. lin. 6. *What? that those very Letters, &c.*] The Authors expression here may seem somewhat obscure; Wherefore I think fit to set down this by way of explication. He says, that the Letters which the *Greeks* used in *Cesar's time*, and which we now use, are rather such as the *Greeks* borrowed from the *Gauls* than what they had originally of their own. This he proves in the end of this Paragraph by the judgement of several Learned Men. So then, if this were so, *Cesar*, who without all question was well enough acquainted with the *Greek Letters* then in use, yet in all likelihood did not so well know what the true old *Gallick Letters* were, the people being strangers to the *Romans*, and he having but lately had any converse with them, and so might very probably mistake, in thinking that, because the Letters were the same,

fame, the Gauls might borrow the Greek Letters to make use of ; whereas the contrary (to wit, that the Greeks, after the disuse of the Phœnician Letters, which Cadmus had brought over into Greece, took the Gallick in their stead) is averr'd by *Lazius, Beccanus, &c.*

C H A P. X.

Pag. 15. lin. 12. *From the sixth Moon.*] Whether that were from the *sixth Month* they began their reckoning, which among the *Romans*, was *August*, therefore called formerly *Sextilis*, as the rest that follow according to order, are styled *September, October, &c.* or whether it were from the *sixth day* of the Moon's age, (as they apply by way of Proverb *Quarta Lunâ nati* to the unfortunate, *Hercules* having been born on such a day of the Moon) is none of my businels to determine, but to leave it to the Readers own inquiry and judgement.

Lin. 17. *Nestor's triple age.*] Which if it be reckoned according to this account of Thirty Years to an Age, makes but Ninety years in all. And though that also be a greit Age for a man to handle Arms, and to attend the duty and service of War, yet that is not so extraordinary a case, but that others may be found in Story to stand in competition with him. Besides it falls short of that description, which *Homer* hath given of him, τὸ δὲ οὐδὲν περιπλέκει τοις γένεσιν αὐτοῦ. Which implyes, that he had out-lived two Generations (to wit, the *Fathers* which had been bred up with him, and the *Sons* which had grown up into his acquaintance) and that now he reigned among the *Grand-children*, the *Third generation*, the two former having been swept off the Stage. And in this fense the *Latins* took it, as appears by *Horace*, who sayes of him *ter Ævo funetus*, that he had gone through the course of nature, lived out the life of man, three times over ; and in that he is styled by another old Poet *triseculiferex*, that is, the Three hundred years old Gentleman ; for as *ævum* in the one signifies the whole space of humane life, so *seculum* in the other is constantly taken for a Hundred years.

Pag. 16. lin. 2. *Greece, all over Italy.*] For all the lower part of *Italy* was at that time inhabited by the *Greeks*, and from them called *Magna Gracia*, or *Gracia Major*, in opposition, I suppose, only to *Sicily* the neighbouring Isle, as being alike inhabited by *Greeks*, but of less extent.

Lin. 18. *Voitland.*] A Province of *Germany*, in the *Upper Saxony*.

Lin. 21. *Having their heads uncovered.*] That as they were bare-footed, so they were bare-headed also, perfect *Gymnosopists*. The *Latin* is *nudis pedibus, capita intecta, Græcanico pallio & cucullato, perulaque*, and may be rendred indeed, *having their heads covered* or muffled. But how ? *With a Pall hooded and a Satchell.* I, but what had the *Satchell* to do with their heads, that hung at their side, and so they are pictured. But to pas this, Reader, thou art at thy own choice, to take which interpretation of the two thou wilt ; for the *Latin* word *intecta*, as I said, admits of either.

C H A P. XII.

Pag. 18. lin. 10. *The Women carried it for Minerva against Neptune.*] There is another account given of this Story, that these two Gods being in a contest, which of them should be intitled to the Presidence of this City *Athens*, they did each of them, to oblige the Community in their

their favour, by a Miracle cause to rise out of the ground, the one (*Neptune*) an *Horse*, to denote Prowess and warlike Courage, the other (*Minerva*) an *Olive-tree* loaden with fruit, an Emblem of Peace and Fruitfulness; and that the Citizens preferr'd the latter, as the greater merit and more welcome blessing.

Lin. 26. *Juno, Salacia, Proserpina.*] *Juno* was Jove the Thunderer's Consort, as *Proserpine* was the forc'd Mate of grim *Pluto*, the infernal Queen. The third, *Salacia*, Lady of the Sea, was Wife to *Neptuneas*, *S. Austin* hath it out of some of the old *Roman* Writers: though among the Poets she generally pass by the name of *Amphitrite*.

Pag. 19. lin. 25. *Amalasinēta, Artemisia, Nicaula, &c.*] These brave Ladies or She-Heroes are famous upon record, and need not any thing further for their commendation, but their Name. This *Artemisia* mentioned here, was not the Wife of *Mausolus*, a virtuous and magnificent Woman too, but another who lived in *Xerxes*'s time, a great Commandress, in alliance with him. *Nicaula*, it seems, though whence he learn't her Name, I cannot tell, for Scripture gives it us not; was she, who is there called the *Queen of the South*, a great admirer of *Solomon's* Wisdom.

C H A P. XV.

Pag. 25, 26. The *Inscriptions*, which are left un-englisched, are only brought in, to evidence, that there were several *Roman Colonies*, beside that at *Maldon*, called *Colonia Viētricensis*, planted up and down in *Britain*; to wit, at *Tork*, at *Chester*, at *Glocester*, and I doubt not but at *Colchester* too, no less than there was one at *Cullen* in *Germany*, as the very name of them both imports, *Colonia*. And that ours hath an addition of *Chester* to it, is usual to some other Cities: *Colchester* for *Colnchester*, which in *Latin* would be *Colonia Caſtri*, or rather *Colonia Caſtrum*, the Castle or Garrison of the Colony.

C H A P. XVI.

Pag. 28. lin. 11. *Now you for your part are Gods Vicegerent in the Kingdom.*] They are the words of Pope *Eleutherius* in his Letter to *Lucy*, the first Christian King, which was in the year of our Lord 183. From whence we may fairly conclude, that in those early dayes, the *Pope of Rome* according to his own acknowledgement had no such pretensions as now for several Ages since they have made, upon the Rights of Princes, to the great disturbance of the World, and reproach of Christian Religion. And indeed this is the more considerable, in that such was the simplicity of devotion in those early Converts, and such the deference, which Princes who embraced the Christian Faith, especially from the Missionaries of *Rome*, had for that *Holy See*, as appears by this one single instance; that it had been no hard matter, nor could be judged an unreasonable thing, for them to lay claim to a right, and assert a power, which was so voluntarily offered. Further I add, that seeing the *Donation of Constantine*, besides that it was alwayes lookt upon as a piece of forgery, was at best, supposing it true, but an Imperial Grant and Concession, which would not be of authority enough to bear up the *Popes Supremacy* in all other Kingdoms of the earth; and seeing Pope *Boniface*, who was the first that with bare face own'd it, his complyance with *Phocas* was so groſly wicked, that none of their own Writers but are ashamed to make that transfaction betwixt those two,

two, an argument for the Papal pretence : Seeing, I say, it is so, if the Pope be intitled, as their *Canonists* pretend, to an Universal Dominion by vertue of his Office, and by Commission from Christ and his chief Apostle S. Peter, how came it to pass, that the Bishops of Rome all along till Boniface, were so modest, as not to challenge any such rights or powers; nay, upon occasion to declare against such pretences, as *Antichristian*; which, if that be true, that the Pope is by his Office, and by a Divine Commission instated into a *Supremacy*, was in effect no less, than to betray the cause of Christ and his Church: how came it to pass, that *Eleutherius* should neglect such a seasonable and exemplary opportunity of maintaining and exercising his right, and should rather chuse to return it in a complement back to the King his Covert? *VICARIUS* verò *D E I estis in Regno*, fayes he, *You are GOD's VICAR in your Kingdom*: which Title now the Pope doth with as much arrogance challenge to himself, as here one of his Predecessors doth with modesty ascribe to the *King*.

Lin. 32. *With the title of Spectabilis.*] Towards the declension of the *Roman Empire*, it was usual so to distinguish great Offices with peculiar Titles, as *Spectabilis*, *Clarissimus*, &c. so among the *Italians*, *Magnifico* to a Senator of *Venice*, *Illustrissimo* to any Gentleman, *Eminentissimo* to a Cardinal: So with us the term of *Highness* is given to a *Prince* of the Blood, *Excellence* to a *Vice-Roy* or a *Lord Lieutenant* and to a *General* of an Army, *Grace* to an *Arch-bisshop* and to a *Duke*, *Honour* to a *Lord*, *Worship* to an *Esquire*, &c.

C H A P. XVII.

P. 29. lin. 43. *Fabius Questor Ethelverd.*] Why he calls him *Fabius Questor*, is at present past my understanding. Did he take upon him a *Roman name*? Was he in any such Office as *Questor*, i.e. Treasurer or Receiver General, wherein he behaved himself like a *Fabius*? or did he intitle his Book by that name? I am to seek.

C H A P. XVIII.

Pag. 31. lin. 19. *Whatsoever there was in Pandora of Good and Fair.*] She was a Woman made by Jupiter's own order, and designed to be the pattern of female perfection: to which end all the Gods contributed to the making of her several gifts, one Wisdom, another Beauty, a third Eloquence, a fourth Musick, &c.

C H A P. XIX.

P. 32. lin. 27. *Wapentakes.*] Which in some of our Northern Countreys is the same as we call other-where a *Hundred*, from the Saxon word *Wæpen*, i.e. *arms*, and *tæt*, i.e. *touch*; as one should say, a touching or shaking of their Arms. For, as we read it in King Edward's Laws, when any one came to take upon him the Government of a *Wapentake*, upon a day appointed all that owed suit and service to that Hundred, came to meet their new Governour at the usual place of their Rendezvouz. He upon his arrival, lighting off his Horse, set up his Lance an end (a Custom used also among the *Romans* by the *Prætor* at the meetings of the *Centumviri*) and according to custom took fealty of them. The Ceremony of which was, that all who were present, touch't the Governours Lance with their Lances, in token of a confirmation: whereupon that whole meeting was called a *Wapentake*, inasmuch

inasmuch as by the mutual touch of one anothers Arms, they had entered into a confederacy and agreement to stand by one another. This fashion, they say, the *Saxons* took up from the *Macedonians* their Progenitors. Others will have it from *tat* to take, and give this account of it, that the Lord of the Hundred at his first entrance upon the place was used to take the Tenants Arms, surrendred and delivered up to him by themselves, in token of subjection by way of Homage. Sir *Thomas Smith* differs from both these; for he sayes, that at the Hundred meeting, there was a Muster taken of their Weapons or Arms; and that those who could not find sufficient Pledges for their good abearing, had their Weapons taken away; so that in his sense a *Ungentake* is properly *Armillistrium*, and so called from taking away their Weapons or Arms, who were found unfit to be trusted with them.

L. 40. *For the Ceremony of the Gown.*] He alludes to the *Roman* Custom, with whom the youth, when they arrived at mans estate, were then allowed to wear *togam virilem*, to put on a *Gown*, the habit of men; whereas before that, they were obliged to wear a Coat peculiar to the age of Childhood, called *Prætexta*: whence *Papyrius*, though yet a Child, being admitted into the Senate-house for his extraordinary secrecy and manly constancy, was called *Papyrius Prætextatus*.

Pag. 33. lin. 9. *Borgangheb.*] Or *Boringab*, from *Borgin*, which in *High Dutch* signifies the *Morning*, and *gab*, a *gift*; to wit, that Present, which a man makes to his Wife, that morning he marries her.

C H A P. XX.

Pag. 34. lin. 3. *Tityus his Liver.*] A Gyant, who for ravishing of *Latona* was adjudged to have his *Liver* after death prey'd upon continually by a Vulture, which grew up again as fast as it was wasted. The equity of which punishment lay in this, that the *Liver* is reputed the souree and seat of all lusts and unlawful desires, and doth naturally, as some Physicians hold, receive the first taint of Venereal distempers (the rewards of impure mixtures) according to that of *Solomon*, speaking of an Adulterer, *Till a dart strike thorongh his Liver*; from whence they gather, that that, which we now call the *French Pox*, was not unknown even in that age of the World.

L. 26. *Prema and Mutinus.*] This latter a Title given to *Priapus*, much-what such a God, as *Baal Peor* was; the other a Goddess forsooth much to the same purpose. For the old *Romans* had Gods and Goddesses, as the present *Romans* have Saints, for every thing, for every action of life. But their Offices were such, as the modest Reader will easily excuse the want of explaining them.

Lin. 38. *Sayes Progne to her Sister Philomel.*] *Tereus* King of *Thrace* having married *Progne* Daughter of *Pandion* King of *Athens*, when he went to fetch her Sister *Philomel*, ravished her by the way on Ship-board; which occasioned a bloody revenge in the murder of his Son *Itys*. At last they were turned all four into so many several sorts of Birds; *Progne* into a Swallow, *Philomel* into a Nightingale, *Tereus* into a Lapwing, and *Itys* into a Pheasant.

C H A P. XXI.

Pag. 36. lin. 20. *With head-money called Wergild.*] A word compounded of the *Saxon* *wert*, the price or value or worth of a man, and *gild* or *gild*, a payment. That is, he that had killed another, was to buy

buy off his life, by paying the full value of the person slain. The prizes or rates are set down in *Ethelstan's Laws*, by *Thrimſi's*, a kind of Coyn, or piece of money, of the value of three shillings, saith Mr. *Lambard*; which being reduced to our *Sterling* stand thus.

<i>A Peasant,</i>	40 <i>l.</i> 1 <i>s.</i>
<i>A Thane, or one in Orders,</i>	300 <i>l.</i>
<i>A General, or Chieftain,</i>	600 <i>l.</i>
<i>A Bishop, or Alderman,</i>	1200 <i>l.</i>
<i>An Arch-Bishop, or Peer,</i>	2250 <i>l.</i>
<i>And a King,</i>	4500 <i>l.</i>

Half of which last sum was to go to the Kindred, and the other half to the publick. And these Rates are set, he fayes, by the Common Law of the *Englyſh*. The reaſon of this pecuniary compensation, was their tendernes of life, that two men might not dye upon the account of the ſame miſchance, according to that ſaying in an ancient Law, *Nulla ſic culpa tam gravis, ut vita non concedatur, propter timorem Dei.* But yet withal in ſome caſes of premeditated or clandestine murder, they were not excused from making ſatisfaction with their life; or in caſe one were not able to pay the *were*, or Fine, he was puniſhed with death. I called this *Head-money*, because in *Latine* it is termed *capitis aſtimatio*, the value or price of a mans head: not in that ſenſe as either *Chevage* or *Poll-money* is ſo called.

C H A P. XXII.

Pag. 37. lin. 42. In the Margin *Caxton* is quoted, a Book, it ſeems, rare; of which he ſaith, That Book, that goes up and down by this name, Mr. *Warin Townſend* of *Lincolns-Inn*, a Gentleman Noble by his Descent and Learning both, very friendly lent me for my uſe in a very fair Manuscript; which courtesie of his, I cannot but think it a foul shame for me, not to own and acknowledge with all thankfulness.

Pag. 38. lin. 17, 18. Even now in the time of thoſe that are called the *Goođ*. Tis *William of Malmesbury*, whom he quotes; *etiam nunc tem-pore Bonorum*. Whether he mean *Goođ Princes*, who would have thoſe Laws obſerved, or *Honest Subjects*, who would obſerve them, or whether there were any ſort of men in his time that went by that Chara-cter of *Boni*, good men, is more than I have to ſay. There was at one time a ſort of Religious persons, that went by the name of *Bon Hommes*; but that can have nothing to do in this buſineſſ.

C H A P. XXIII.

Pag. 39. lin. 14. Every Native home-born lawful man.] In the *Latin* it is *Indigena legalis*, in the *Saxon* Law-term it is *Inlaughe* or *Inlaugb*, that is, one that is under the Law, *Inlagatus*, who is in *Frank pledge*, or belongs to ſome *Court Leet*: as all Males from twelve years old and upwards were obliged to be. So *Bratton* tells us.

Lin. 27. *Decenna.*] The ſame as *Decuria*, which is generally rendred a *Tithing*, i.e. a Company of ten men with their families, all of them bound to the King to anſwer for one anothers good and peaceable behaviour. From the *Latin* word it is called a *Dozein*, and the people that belong to it are called *Deciners* or *Dozeniers*, that is, *Decennarii*. The chief of them is termed *Decurio* or *Decanus Friburgi*, the *Tithing-*

man or Headborough. And all Males of twelve years age and upwards (except Nobles and Religious persons) were obliged to be of some *Dozein* or other. But now there are no other *Dozeins* but *Leets*, and no other security there given for the Kings Peace, but the persons own Oath.

Lin. 29. *Friborhg.*] From the Saxon *freg*, *free*, and *borgh*, a *surety* or security : or, as some write it, *Fridburgh*, from *frid*, *peace*, and *burgh*, a *surety*. If it be taken for the person, it is the same that a *Deciner* (we now spoke of;) if for the action, it is their being *sureties* for one another : if for the company of these mutual *ingagers*, 'tis the same as *Decuria*, a *Tything*, in *Saxon tienmannatale*, i. e. the number of ten men. The *Normans* retained the same custom, but altered the name, calling it *Frankpledg*, from the *French*, *Frank*, i. e. *free*, and *pledg*, i. e. *surety*. And the compass or circuit of this *Frankpledg* the same as that of *Friburg*, to wit, the *Decenna* or *Dozein*, i. e. ten households.

Lin. 40. *Manupastus.*] Of this *Braeton* sets down a Rule for Law, that every person, whether free-man or servant, either is or ought to be in frank-pledge or of some bodies *mainpast*. Now he is of ones *Mainpast*, saith he, who is allowed *Victuals* and *Clothes*, or *Victuals* only and *Wages*. And this was the reason, why great men were not obliged to be of any ordinary *Dozein*, because Bishops, Earls and Barons, as the same *Braeton* informs us, ought to have their menial servants in their own *Friborhg*, and to answer to the King for their behaviour, and to pay what forfeits they should make, if they had not the persons themselves forth-coming. And this, fayes he, is the case of all those who are of any ones *Mainpast*.

C H A P. XXIV.

P. 41. lin. 16. *John Scot Erigena.*] A School-man famous for his subtily, called in Latin, *Johannes Duns Scotus*. Whether *Duns* were the Name of his Family, as it might be, *Johannes de Dunis*, which in *Englysh* would be *John Downs*; or whether it were a Nickname given him for his slovenliness and seeming blockishness, from the word *Dunte*, which in Barbarous Latin is *Dunsa*, (For so in *Camden's Remains* we find the Emperour *Charles*, as I take it, putting that question to him, as he sat at Table over against him, *Quid interest inter Scotum & Sotum*, What difference between a *Scot* and a *Sot*? to which he as freely replied, *Mensa*, the Table, Sir) I shall not determine. But *Scotus* or *Scot*, is the name of his Countrey, he being a *Scotch*-man, and for that reason called also *Erigena*, that is, *Irish* born, to wit, a *Highlander*; for those people were originally *Irish*, and came out of that Island over into the North parts of *Scotland*. Now *Ireland* is by several Authors Greek and Latin called *Ierna*, and by the Inhabitants themselves *Erin*.

L. 43. *The Goddess Anna Perenna.*] The Lady President of the year, *Anna ab Anno*; to whom they address their devotions, that she woul'd *perennare*, that is, preserve and continue health and plenty and prosperity from year to year; for which reason she was called *Anna Perenna*. Now our Author here brings in long-lived *Nestor* and this Goddess, to shew that those good fellows in quaffing of healths, do wish *muchos annos*, as the *Spaniard* faith, many and many a years life to their absent friends, while in the mean time by tossing off so many bowsing *Canns*, they shorten their own lives.

Pag. 42. lin. 24. **Englescyre.**] Or **Engleterie**, that is, the being an *Englifb-man*. For there was a Law made by King *Knute* in favour of his *Danes* (and so afterward it was interpreted in behalf of the *Franchigenæ, French-men*, or whatever foreigners) that if any such were pri-vily murdered or slain, the Village, where the fact was done, should be amerced in a lusty fine to the King, unless they could prove **Engle-terie**, that is, that the murdered person was an *Englifb-man*, one born of *Englifb Parents*, in which case there was no fine levied. So that the *Danes* and *French*, when they governed here, provided they might se-cure themselves from the *Englifb*, were well enough content to let them destroy one another.

C H A P. X XV.

Pag. 44. lin. 11. *An Olympiad.*] An account of time used by the Greeks, consisting of four years, so called from the *Olympick Games*, which were celebrated in honour of *Jupiter Olympius* every fifth year. This reckoning began first in the year of the World three thousand one hundred seventy four.

Q 2

In



In the SECOND BOOK.

C H A P. I.

Pag. 48. l. 5. *By right of Fréhold.*] *Allodii jure*, that is, by a man's own right, without acknowledgment of service or fealty, or payment of Rent to any other as a Superior Lord. In which respect it is opposed to an Estate in *Fre*, wherein though a man hath a perpetual right to him and to his heirs for ever, yet seeing he owes a duty and service for it, it cannot be said properly and simply to be his own. And such are all mens Estates here in *England*, but the Kings in the right of his Crown, who cannot be supposed to hold of another, or to owe fealty to any Superior, but to God only.

Lin. 12. *Under Military service.*] Or *Knights service*, that is, to find the King such a number of Men and Arms in time of War, as it is here expressed. See *Correll* in the word *Chivalry*. Indeed the Clergy before the Conquerour in the time of the *Saxons* (as we find it in the five and twentieth Chapter of the first Book) were allowed to be free from Secular Services, but with an Exception and Reserve however of these things, *towit*, Expedition, Repairing of Castles and Building of Bridges, from which last duty the High-Priests among the *Romans* were called *Pontifices*, i. e. Bridge-makers. Now this bringing of the Bishops Baronies under *Knights Service*, was sure enough design'd to engage them into a close dependence upon the Crown, and to take them off from hankering after any foreign Power, to which they might pretend to owe any subordination; as all along the times of Popery, out of reverence to the *Holy See*, they were forward enough upon occasion to think themselves obliged to do, even to the high discontent and great disservice of their Kings.

C H A P. II.

Pag. 51. lin. 12. *Ready money.*] So I render *Viva pecunia*: which though *Spelman* saith it is so called, that it may the more expressly signifie *pecudes*, i. e. Cattle; yet he doth not so me, I confess, make out by any fair instance that it doth ever so signifie; and that it cannot be taken in that sense here, is plain from what immediately goes before, *quot animalia imò quantum vivæ pecunie quisque possidebat*: where *animalia* living creatures include *pecudes* the Cattle.

C H A P.

C H A P. III.

Pag. 54. lin. 32. **Boseham.**] What Earl Godwin's trick was, or wherein the conceit lay, I cannot at present well imagine, unless it were in the equivocation or misunderstanding of the word **Boseham**, as it falls in with the word **Bosom** in the pronunciation and sound of it; thus. Supposing the Earl at meeting of the Arch-Bishop, coming up to him upon pretence of saluting him said, *Give me your Boseham, my Lord;* to which the Arch-Bishop thinking belike, he might, by way of desiring his Pastoral embrace, mean only his **bosom**, readily made answer, *I give you my bosom;* which the Earl with a cunning fetch interpreted a Grant of his Estate of **Boseham**.

Pardon, Reader, my mistake, if it be one; since I have no better account, from my own guess, to give, meeting with no help from our Law-Dictionaries.

C H A P. IV.

P. 56. lin. 8. *The first Sheriffs of Counties.*] A **Sheriff or Shyre-reev** signifies the Governour of a County, called in *Latin Vice-comes*, as Deputy to the Count or Lord or Chief Man of the County; though even in the *Confessor's* time he was reckoned the Kings Officer, and not the Counts. This Office, as Mr. *Camden* tells us, was first set up by King *Alfred*, who also divided *England* into Counties, and those Counties again into Hundreds and Tythings.

Lin. 29. *Other Judges without appeal.*] This should seem to be the Court of **Chancery**: for which reason the Lord **Chancellor** is said to keep the Kings conscience, as here these Judges are compared to the Kings bosom.

Lin. 37. *Acting a Busiris his part.*] i.e. Treating strangers ill; he being a cruel Tyrant of *Egypt*, who slew strangers, and sacrificed them to his Gods: whence the Proverb, *Busiridis a.e.*

Pag. 57. lin. 39. *that he should pay it at the Scale.*] That is, should pay it by weight, or according to full weight.

C H A P. VI.

Pag. 60. lin. 17. *Being Lord Chief Justice of the whole Kingdom.*] In the *Latin* it is thus expressed; *totius regni placitor & exactor*: where I confess the former title of the two gave me the occasion of my mistake, as if he had been Chief Justice of the *Common Pleas*: whereas I should rather have rendred it thus; *who had been* (to wit, in King *Rufus* his time) *Pleader or Demandor and Receiver of the Kings duties throughout the whole Kingdom.* For such an Officer this *Exactor regis* was, otherwise called *Grafio*. See *Spelman* upon both those words.

Lin. 39. *In the times of the Saxons a Heret.*] This at first was a tribute given to the Lord for his better preparation towards War; but afterward though the name were kept, the thing was altered, being taken for the best Chattle, that the Tenant hath at the hour of his death, due to the Lord by custom, be it Horse, Ox, &c. That *Hereot* and *Relief* do not signifie the same thing, appears by this, that they are both often found to be paid out of one and the same Tenure, and again that the heir

heir alway succeeds into the Estate upon the payment of the *Relief*, but not always upon the payment of the *Hire*.

Lin. 42. *In French is called a Relief.*] From the Verb *Relever*, to raise again and take up the Estate which had fallen into the Lords hand by the death of the Ancestor. It is a sum of money, which the new Homager, when he is come to age, payes to the Lord for his admission or at his entrance into the estate. Whence by the old Civilians 'tis called *Introitus*, and in Greek *εἰσδιχία*. This sum was moderately set; wherein it differed from *Ransom*, which was much more severe. The Kings rates upon his Homagers were thus: An Earls heir was to give an hundred Pounds, a Barons an hundred Marks, a Knights an hundred Shillings at most; and those of lesser estate less, according to the ancient custom of their Tenures: as *Spelman* quotes it out of the Charter of Henry the Third.

Pag. 61. lin. 11. *Of the greater Vavasors.*] They were a sort of Gentlemen next in degree to the Barons. They did not hold immediately of the King, but of some Duke, Marques or Earl. And those that held from them again, were called *Valvasini*, or the lesser *Vavasors*. There is little certainty what their Offices or Priviledges were, or indeed whence they were so called; whether *qu. ad valvas stantes*, or *valvae assidentes*, for their sitting or standing at their Lords door, (if those of that quality did so) as some would have it; or that they kept the doors or entrances of the Kingdom against the enemies, as *Spelman* sayes; or whether from *Vassali*, as the Feudists derive the name, from that inferiour Tenure they had mediately from the King by his great Lords; which seems the more likely, because these greater *Vavasors*, who did so hold, are sometimes termed *Valvavores regii* and *Vassi dominici*, that is, the Kings Vassals.

Lin. 27. *Her Dowry and right of Marriage.*] In the Latin it is *dotem suam & maritagium*. Now *Dos* is otherwise taken in the *English*, than in the *Roman Laws*; not for that which the man receives with his Wife at marriage, a *Portion*: but for that which the Woman hath left her by her Husband at his death, a *Dowry*. And *Maritagium* is that which is given to a Man with his Wife, so that 'tis the same as *Dos* among the *Romans*, saith *Spelman*. But this is too general, I think, that the man should be obliged to return at his death *all* to his Wife that he had with her, beside leaving her a Dowry. I am therefore rather inclined to *Covell*, who tells us, *Maritagium* signifies *Land* bestowed in marriage; which, it seems, by this Law was to return to the Wife, if her Husband dyed before her. The word hath another sense also, which doth not belong to this place, being sometime taken for that which Wards were to pay to the Lord for his leave and consent that they might marry themselves, which if they did against his consent, it was called *Forfeiture of marriage*.

Lin. 35. *The common Duty of Money or Coinage.*] So I render the word *Monetarium*. For it appears, that in ancient times the Kings of *England* had Mints in most of the Countreys and Cities of this Realm. See *Covell* in the word *Moniers*. For which priviledge, 'tis likely, they paid some duty to the chief place of the Mint. Thus in *Doomsday* we read, as *Spelman* quotes it, that in the City *Winchestre* every Monyer paid twenty shillings to *London*; and the reason given, *pro cuncis monetarum accipiendo*, for having Stamps or Coins of Money. For from this Latin word *Cuncus* (which our Lawyers have turned into *Cunia*, from whence

whence the Verb *Cunare*) comes our English word *Coyne*. Now it is more than probable, that the Officers of the Chief Mint might by their exactions upon the inferior Mints give occasion for the making of this Law.

Lin. 42. *Or Children or Parents.*] By *Parent* here we are to understand not a Father or Mother, but a Cousin, one a-kin; as the word signifies in French, and as it is used in our Laws. And indeed the Latin word it self began to have that sense put upon it in vulgar speech, toward the declension of the Empire, as *Lampridius* informs us.

Pag. 62. lin. 21. *A pawn in the scarcity of his money.*] That is, if he were not able to pay his forfeit *in specie*, i. e. to lay down the money, he was to give security by a pawn of some of his Goods or Chattels. See *Cowell* in the word *Gage*. This in Latin is called *Vadium*, a pawn or pledge, from *Vas*, *vadis*, a surety. Hence *Invadiare*, to pawn or ingage a thing by way of security, till a debt be paid.

Lin. 23. *Nor shall he make amends.*] From the French *amende*, in our Law-Latin *emenda*: which differs from a Fine (or mulct) in this, that the Fine was given to the Judge, but *Amends* was to be made to the Party aggrieved. Now there were three sorts of this *Amende*, the Greater which was like a full Forfeiture, the Mid-one at reasonable terms, and the Least or Lowest which was like a gentle Amercement. This distinction will help to explain the meaning of this Law.

L. 30. *Per see de Hauberke.*] This in Latin is called *Fendum Hauberticum*, i. e. *Loricatum*, fayes *Hotoman*, from the French word *Haubert*, that is, a Coat of Mail, when a Vassal holds Land of the Lord on this condition, that when he is called, he be ready to attend his Lord with a Coat of Mail or compleat Armour on. Now *Haubert*, as *Skelman* tells us, properly signifies a High Lord or Baron, from *Haut* or *hault*, high, and *Ber* (the same as *Baro*) a Man or Baron. And because these great Lords were obliged by their place and service to wait upon the King in his Wars on Horse-back with compleat Armour, and particularly with a Coat of Mail on: hence it came, fayes he, that the Coat of Mail it self was also called *Haubert*; though he doth afterward acknowledge that the word is extended to all other Vassals, who are under that kind of Tenure. But then at last he inclines to think, that the true ancient writing of the word is *Hauberk* (not *Haubert*) as it were *Hautberg*, i. e. the chief or principal piece of Armour; and *Berg* he will have to signify Armour, as he makes out in some of its compounds, *Bainberg* Armour for the Legs, and *Halsberg* Armour for the Neck and Breast: and derives it from the Saxon *Beorgan*, i. e. to arm, to defend. Add to this, saith he, that the French themselves (and we from them) call it an *Haubergeon*, as it were *Haubergium*.

Lin. 33. *From all Gelds.*] The Saxon word *geld* or *gild* signifies a Tribute or Tax, an Amercement, a payment of money, and money it self: whence I doubt not, but the best sort of money was called *Gold*. It is from the Verb *geldan* or *gyldan*, to pay. In Latin it is *Geldum*, and not *Gilda*, as *Cowell* writes it. For this signifies quite another thing, a Fraternity or Company of Merchants or the like. Whence a *Gild-hall*, that is the Hall of the Gild or Society: such as was once the *Stilyard*, called *Gildhalla Teutonicorum*, the Gild-hall for the Dutch Merchants from the Hanse-Towns.

C H A P. VII.

Pag. 63. lin. 25. *Iphis and Ianthis and Ceneus.*] Persons mention'd by Ovid, who changed their Sex, from Female to Male. *Iphis* was a Maid of Crete, who after her *Metamorphosis* when she turn'd to Man, took *Ianthe* to Wife: and *Ceneis* (for that was her Maiden Name) was a *Thessalian* Girl, whom *Neptune* made a Whore of first, and then at her request a Man, who thenceforward went by the Name of *Ceneus*.

Lin. 34. *Cheats, whom they commonly call Coyners.*] In Malmesbury's Latin, *Trapezitas*, *quos vulgo Monetarios vocant*. Which bare citation is all the account, that Spelman gives of the word *Monetarius*. It doth properly signify an Officer of the Mint, that makes and coyns the Kings money; a *Monier*. But here by the Historian's implying that such fellows, as this Law was made against, were *falsarii*, Cheats, and by our Author's terming of them *adulteratores monetae*, Counterfeiting of Coyn: we must understand them to be False Coyners, Clippers, Washers, Imbasers of the Kings Coyn, and the like. And therefore I render'd *trapezitas* (which otherwise is a word of innocent meaning for Money-Changers, Bankers, &c.) in the Historian's sense *Cheats*.

C H A P. VIII.

Pag. 65. lin. 24. *Every Hide of Land.*] It is so called from the Saxon word *hyden*, to cover; so that thus it would be the same as *Tetum* in Latin, a Dwelling-house. And thus I question not, but there are several houses called *The Hide*: for I know one or two my self so called, that is, the Capital Messuage of the Estate. Nor is it so confined to this sense, but that it takes in all the Lands belonging to the Messuage or Manour-house, which the old Saxons called *hidelandes*, and upon some such account no doubt *Hidepark* had its name, as a Park belonging to some great House. Now as to the quantity, how much a *Hide of land* is, it is not well agreed. Some reckon it an hundred Acres, others thereabouts, by making it contain four Yardlands, every Yardland consisting of twenty four Acres. The general opinion is, that it was as much as could be ploughed with one Plow in a year, *terra unius aratri cultura sufficiens*. And thus it should be muchwhat the same as *Carrucata terra*, i.e. a Plough-land. From Bede, who translates it *familia*, they gather it was so much as could maintain a family. There is mention made of these *Hides* in the Laws of King *Ina*, an hundred years before King *Alfred*, who divided the Countrey into *Counties* or *Shires*. And Taxes and Assessments were wont to be made according to these *Hides*; up as high as King *Ethelred*'s time in the year of our Lord 1008. Since the Conquest, *William the First* had six shillings for every Hide in *England*, *Rufus* four, *Henry the First* here three for the marriage of his daughter.

Pag. 66. lin. 8. *This right is called Wreck.*] i.e. by which the King claims shipwreck't goods cast on shoar. For though by the Law of Nature such things, as being *nullius in bonis*, having no Owner, every one that finds them may seem to have a right to them; yet by the Law of Nations they are adjudged to the Prince as a special priviledge by reason of his dignity. Now *Wreck* (or as the French call it *Varec*) properly signifies any thing that is cast on shoar, as Amber, precious Stones,

Stones, Fishes, &c. as well as shipwrack't goods : from the *Saxon wæt*, i. e. any thing that is flung away and left forlorn ; though use hath limited the word to the later sense.

C H A P. IX.

Pag. 68. lin. 6. *The Roman Laws were banisht the Realm.*] I suppose there may be some word missing or mistaken in the *Latin*, à regno jussæ sunt leges Romane : But that which follows, the forbidding of the Books, obliged me to that interpretation : for why should the Books of those Laws be prohibited, if the Laws themselves were (as the *Latin* reading seems to import) ordered and ratified by the Realm. Wherefore I suppose some mistake, or omission, and for à regno jussæ, read à regno pulsæ or exulare jussæ, &c. unless you would like to have it thus rendred, commanded out of the Kingdom : which I confess would be a very odd unusual construction.

C H A P. X.

Pag. 69. lin. 39. *Three hundred Marks of Gold.*] A *Mark* weigh'd eight ounces, and as *Covell* states it out of *Stow*, it came to the value of 16 l. 13 s. 4 d. At this rate three hundred Marks of Gold come to five thousand Pound ; and to every Bishop five Marks, supposing only ten Bishops, come to 833 l. 6 s. 8 d. which is a very unlikely summ in this busines. 'Tis true, the value of it, as of other Coyns and summs, might vary. And so we find in *Spelman*, that an uncertain Author reckons a *Mark of Gold* to be worth fifty Marks of Silver. But then 'tis as uncertain, what *Marks of Silver* he means. For if they be such as ours are (and as they were in King John's time) at 13 s. 4 d. then a *Mark of Gold* will be of the value of 33 l. 6 s. 8 d. which is just double to the former value of 16 l. 13 s. 4 d. (which being resolved into *Marks of Silver*, makes but 25.) But in ancient times a *Mark of Silver* was only 2 s. 6 d. so that fifty of them will make but 6 l. 5 s. Another instance we meet with, where one *Mark of Gold* is accounted equivalent to ten *Marks of Silver* ; which taking a *Mark* for 13 s. 4 d. comes to 6 l. 13 s. 4 d. Another, where nine *Marks of Silver* pass for one *Mark of Gold*, in a payment to the King : which is just six pound. And these three last accounts agree pretty well together. Taking the middlemost of the three, viz. a *Mark of Gold* at ten *Marks of Silver* ; thus the above named summ of three hundred *Marks of Gold*, that is, three thousand *Marks of Silver* amounts to two thousand Pound ; and the five *Marks* to every Bishop (supposing but ten Bishops) come to 333 l. 6 s. 8 d. But if we take these *Marks of Silver* at 2 s. 6 d. the account will grow much less. For ten such *Marks* are but 1 l. 5 s. so that the three hundred *Marks of Gold* at this rate will come but to 375 l. Sterling. But that these *Marks* of the ancient and lower estimate are not here intended, may probably enough be gathered from one passage more we find there, *Centum solidi dentur vel marca auri*, where, if *solidi* stand for shillings (for they may be taken for *souls* as the *French* call them) a *Mark of Gold* is made of equal value with 5 l. Sterling. And thus three hundred *Marks of Gold* come to Fifteen hundred pound.

I confess after all, most of these accounts of the *Dark*, *Gold* or *Silver*, may be admitted of, as having possibly at some time or other been true ; since mony, both in its Coyns and Summs, hath in several Ages of the World, risen, and fallen according to its plentie or scarcity.

Lin. 42. *Being arraigned and accused of any matter.*] Or rather in the Law-spelling arrested ; in *Latin rectatus*, that is, *ad rectum vocatus*, convened before a Magistrate and charged with a crime. Thus *ad rectum habere*, is in *Bracton*, to have a man forth coming, so as he may be charged and put upon his tryal. It may be also rendred, *taken upon suspicion*. It is written sometime *retatus* and *irretitus*.

Pag. 70. lin. 33. *To give suretisbip for the Remainder.*] I confess I do not well know how to apply to this place that sense, which our Common Law takes the word **Remainder** in, for a power or hope to enjoy Lands, Tenements or Rents after anothers estate or term expired ; when an estate doth not revert to the Lord or Granter of it, but *remains* to be enjoyed by some third person. What if we say, that as Bishops could not (because their estates are of Alms) grant any part of their Demeans *ad remenantiam*, for ever or to perpetuity, so here Excommunicate persons were not obliged *dare vadium ad remenantiam*, to find sureties for continuance or for perpetuity, that is, for their future good behaviour, but only to stand to the judgement of the Church in that particular case for which they were at present sentenced.

C H A P. XI.

Pag. 72. lin. 24. *If a Claim or Suit shall arise.*] In the *Latin*, *si calumnia emerferit*, a known and frequent word in our Law, which signifies a Claim or Challenge, otherwise termed *clameum*.

Lin. 37. *Till it shall by Plea be deraigned.*] or **Dereyned** : which is in *French* *dereyne*, in the *Latin*, *disfratioratum*, which as it hath several significations in Law, so here it imports, after a full debate and fair hearing, the determination of the matter by the judgement of the Court.

C H A P. XII.

Pag. 75. lin. 2. *By the name of **Bumen**.*] The same say some, as the *Danes* call *yong men*. Others derive the word from the *Saxon* *geman*, or the old *Dutch* *Gemen*, that is, common, and so it signifies a Commoner. Sir *Tho. Smith* calls him *Toman*, whom our Laws term *legalem hominem*, a Free-man born (so *Camden* renders it by *Ingenuus*) who is able to spend of his own free Land in yearly Revenue to the summ of Forty Shillings, such as we now, I suppose, call *Free-holders*, who have a Voice at the Election of Parliament-men. But here the word is taken in a larger sense, so as to include servile Tenure also or Villenage.

C H A P. XIII.

Pag. 77. lin. 5. **Leude-men.**] From the *Saxon* *Leod*, the common people. It signified in Law a Subject, a Liege man, a Vassal, a Tenant : hence in *High-dutch* a Servant was called **Leute**, in *Old English* a **Lout**. But in common acceptation **Leud** was formerly taken for a Lay-man,

Lay-man, ~~law-sns~~, one of the people, or for any illiterate person. Now it is used to denote one who is wicked or loose and debauched.

C H A P. XIV.

Pag. 79. lin. 8. *The States of the Kingdom, the Baronage.*] He means the whole Parliament, and not only the House of Lords by the word *Baronage*. For though by *Barons*, now we properly understand the Peers of the Realm; yet anciently all Lords of Manours, thole who kept Court-Baron, were styled *Barons*: Nay *Spelman* tells us, that all Free-holders went by that name before the Free-holds were quit letted out into such small pittances, as now they are, while Noble-men kept their Lands in their own hands, and managed them by their Vassals. *Covell* gives this further account of those Lords of Manours, that he had heard by men very learned in our Antiquities, that near after the Conquest all such came to Parliament, and sat as Nobles in the Upper House. But, as he goes on, when by experience it appeared, that the Parliament was too much pestered with such multitudes, it grew to a custom, that none should come but such as the King, for their extraordinary wisdom or quality, thought good to call by Writ, which Writ ran *hac vice tantum*, that is, only for this turn. So that then it depended wholly upon the Kings pleasure. And then he proceeds to shew, how after that they came to be made Barons by Letters Patents, and the Honour to descend to their posterity.

Lin. 27. *By way of safe pledge.*] That is, to oblige them to give security for the parties appearance against the day assigned; who in case of default were to undergo the damage and peril of it.

Pag. 80. lin. 7. *St. Peter's pence.*] These *Peter-pence* were also called in Saxon, *Romescot* and *Romefeoh* (that is, a Tribute or Fee due to *Rome*) and *Rome-penny* and *hearth-penny*. It was paid yearly by every Family (a Penny a house) at the Feast of *S. Peter ad Vincula* on the first day of *August*. It was granted first, sayes our Author out of *Malmesbury*, by *Ina* or *Inas* King of the *West-Saxons*, when he went on Pilgrimage to *Rome*, in the year of our Lord 720. But there is a more clear account given by *Spelman* (in the word *Romastot*) that it was done by *Offa* King of the *Mercians*, out of an Author that wrote his Life. And it is this, That *Offa* after thirty six years Reign having vowed to build a Stately Monastery to the memory of *St. Alban* the *British* Protomartyr, he went on Pilgrimage to *Rome*, *Adrian* the First then Pope, to beg Indulgences and more than ordinary Priviledges for the intended work. He was kindly received, and got what he came for; and the next day going to see an *English* School, that had been set up at *Rome*, he for the maintenance of the poor *English* in that School, gave a Penny for every house, to be paid every year throughout his Dominion, (which was no less than three and twenty Shires at that time) only the Lands of *S. Alban* excepted. And this to be paid at the Feast of *S. Peter*, because he found the body of the Martyr on that day, for which reason it was also called *S. Peter's Penny*. And although at last these *Peter-pence* were claim'd by the Pope as his own due and an Apostolical right, yet we find, that beside the maintenance of a School here mentioned, for which they were first given, they have by other Kings been appropriated to other uses. Thus we read that *Atelwulf* Father to King *Alured*, who was the first Monarch of this Isle, granted three hundred

Marks (the summ total of the Peter-pence here, bating only an odd Noble) to be paid yearly at *Rome*. One hundred for the honour of S. Peter, to find Lights for his Church: another hundred for the honour of S. Paul on the like occasion: and the third hundred for the Pope's use to enlarge his Alms. This was done in the year 858. when *Leo the Fourth* was Pope.

Lin. 9. Thirty pence of live money.] Possibly the worth or value of thirty pence in Goods and Chattels. King *Offa*, in his Grant thus words it, *quibus sors tantum consulit extra domos in pascuis, ut triginta argenteorum pretium excederet*; who had an Estate besides Houses in Lands, which might exceed the value of thirty silver pence.

Lin. 15. Out of a Rescript of Pope Gregory.] We have the whole Letter set down in *Spelman*, which speaks in English thus, *GREGORY the Bishop, Servant of the Servants of God, to his Worshipful Brethren the Arch-Bishops of Canterbury and York, and to their Suffragans, and to his beloved Sons the Abbots, Priors, Arch-Deacons and their Officials, appointed throughout the Kingdom of England, unto whom these Letters shall come, Greeting and Apostolical Benediction. In what manner the Pence of S. Peter, which are due or owing to our Chamber, are to be gathered in England, and in what Bishricks and Dioceses they are owing, that there may arise no doubt on this occasion, we have caused it to be set down in this present Writing, according as it is contained in the Register of the Apostolick See. Out of the Diocese of Canterbury seven pounds and eighteen shillings sterling: Out of the Diocese of London sixteen pounds, ten shillings. And so of the rest. Teoven at the old City, April 22. in the second year of our Popedom.* There is some difference though in the account of the Dioceses. For after *Lincoln* he leaves out *Coventry* and puts *Chichester* for *Chester*, 8*l.* and then after *Bath* he puts in *Salisbury* and *Coventry* (with a mistake 10*l.* 10*s.* for 5*s.*) and leaves *Tork* last. Besides every body knows there are more Dioceses now than were then. This was *Gregory the Fifth* that wrote this, and it was (our Author tells us) in the time of King *Edward the Second*. But *Edward the Third* in the year of the Lord 1365. and of his Reign 39. forbade these Peter-pence to be paid any more at *Rome*, or to be gathered any longer in England.

C H A P. X V.

Pag. 81. lin. 10. Into six Provinces or Circuits.] As they are for number still, with two Judges a piece, though at first three. How these differ from what they now are, as to the Counties, the Reader may easily satisfie himself. Here are thirty seven of them, as we now reckon: only with this difference, that *Monmouth* and *Rutland* are left out, and *Richmond* and *Copland* are put in.

Pag. 82. lin. 27. And if he perisb, i. e. sink, let him lose one foot.] For that in this tryal by water, was the sign and proof of guilt, if the party thrown in did not swim, which is quite contrary in the tryal of Witches: as you will find in the next Chapter, which treats of *Dreadfuls*.

Lin. 39. The Kings great Assise.] *Assise* is a word, that hath many significations in our Law. It is here in the Title taken for a Statute; *The Assises* (i. e. the Statutes and Ordinances) of King Henry made at *Clarendon*. But in this place it is used for a Jury; and it is either the Great or Grand Assise, which serv'd for the right of Property, and was to consist

dred and forty Acres) make one Knights fee. A third reckons it otherwise, that sixteen Yard-lands make a whole Knights fee; which if we make a Yard-land to be twenty four Acres (according to the first account) comes to three hundred eighty four Acres; but if (according to the second) we take it for forty Acres, it amounts to six hundred and forty Acres. And, saith he, when they are taxed at six Shillings four Pence (that is, every of the sixteen Yard-lands, which make up the Fee, at so much) they make the sum of one hundred Shillings (or five Pound, which was the ancient Relief of a Knights fee.) But this is a mistake either of the Author or the Citation; it is six Shillings three Pence, which makes that just sum; from whence we learn also what proportion was observed by the Lord in setting and demanding of the Relief upon the next Heir after his Ancestor's decease. Further in the Kings Writ, as *Glanvil* cites it, it is said, that twelve Plough-lands make one Knights fee: which, allowing to a Plough-land one hundred & twenty Acres, amounts to one thousand four hundred and forty Acres. In the main, as to the value of a Knights fee, 'tis enough what *Cowell* tells us, that it was so much inheritance, as was sufficient yearly to maintain a Knight with convenient Revenue, which in *Henry the Thirds dayes*, *Camden* sayes, was fifteen Pounds, and *Sir Thomas Smith* rates at forty. But to confirm the account, which our Author here gives us, we find in the Statute for Knights in the first of *Edward the Second*, that such as had twenty Pounds in Fee, or for term of life *per annum*, might be compelled to be Knights. And as to the various measure of Land (of which we have had a remarkable instance in this busines before us) *Spelman* hath given us good reasons for it; since where the Land was good, they might probably reckon the fewer Acres to a Yard-land, a Hide, a Knights fee, &c. and where it was barren, they might allow the more. Beside, that some Lords, who lett these Fees, might be more bountiful and profuse, others more parsimonious and severe to their dependents; and that the services which were imposed upon these Fees, might in some Mannors according to custom be lighter, in others upon agreement and covenant more heavy. All which might strangely diversifie the account, as to the quantity or measure of those Lands, which were to make up a Knights fee.

C H A P. XVIII.

Pag. 91. lin. 4. A little Habergeon or Coat of Mail.] In Latin *Halbergellum*, a diminutive from the Saxon *Halsberg*, armour for the Neck and Breast. It is written also *Haubergellum* and *Hambergellum*. They mistake themselves, who translate it a *Halbert*, in French *Halberde*, an offensive Weapon, for a Coat of Mail, which is armour of defence, in French *Haubert* or *Hauberk*; whence *Fe de Hauberk*, which we have already explained somewhere before.

Lin. 5. A Capelet of Iron.] A little Iron or Steel Cap instead of a Head-piece or Helmet, which the better sort wore. For by comparing this with the two fore-going Sections, we find they were to have a difference of Arms according to their different Quality and Estate.

Lin. 7. A Wambais.] *Wambasium* or *Wambasia*, so called, I suppose, because it reached over the belly or womb, was a Jacket or Coat of

C H A P. XVI.

ence approve of these
high-standing bar next

would to God, she would deal as ingenuously in throwing off those other errors and corruptions, we do so justly charge her with.

of another nature, as
Tenure. Now *Frank*

Pag. 88. lin. 12. *The Falcidian Law.*] So named from one *Falci-
dius*, who being Tribune of the people in *Augustus* his time, was the
Maker of this Law.

Maker of this Law.

Lin. 33. Twenty pounds worth of Land in yearly revenue.] So I rende
20. *librata terra*. For although Cowell in proportion to *Quadrantata*, or
Fardingdeal of Land, which he saith is the fourth part of an Acre, seem
at first to gather that *Obolata* then must be half an Acre, *Denariata*
whole Acre, and by consequence *Solidata* twelve Acres, and *Librata*
twenty times twelve, that is, two hundred and forty Acres: Yet this
was but a conceit of his own. For by having found the word used
with reference to Rent as well as Land, thus 20. *libratas terrarum*
et redditus, he is forced to acknowledge, that it must signifie so much

et redditus, he is forced to acknowledge, that it must likewise be included in the Land as may yield twenty shillings per annum. To which opinion *Sperman* also gives his assent. But what quantity of Land this *Librata terra* contains, is, cannot so easily be determined. *Cowell* out of *Skene* tells us, it contains four Oxsangs, and every Oxsang thirteen Acres: if so, there

contains both Ogangs, and every Ogang thirteen Acres. It is, that it is fifty two Acres, and twenty of them, which make a Knights fee, come to one thousand and forty Acres, which somewhat exceed the account here set down of six hundred and eighty out of the Red Book of the Exchequer. But there is a great deal of more difference still, as the account of the Knights fee is given by others. In one Manuscript we read, that *A Tardland contains twenty four Acres, four Tardlands make one Hide, (that is, ninety six Acres), and five Hides make a Knights fee, (that is, four hundred and eighty Acres) the Relite whereof is a hundred Shillings.* Another Manuscript hath it thus, *Ten Acres according to ancient custom make one Fardel, and four Fardels (that is, forty Acres) make a Tardland, and four Tardlands (that is, one hundred and sixty Acres) make one Hide, and four Hides (that is, six hundred and forty Acres) make a Knights fee.*

R 3

Notes upon the Second Book.

whole Countrey is called *Chartrain*, and their chief City *Chartres*, about eighteen Leagues from *Paris* Eastward. That Town eight Miles off called *Dreux* (in Latin *Drocam*) was so named from the *Druids*, who dwelt there at first, and likely enough afterward often resorted thither.

P. 94. l. 27. *Of the three Estates, the King, the Lords, and the Commons.*] There are indeed three Orders or Estates acknowledged by true Divines and sound Lawyers in the English Government; to wit, the King, the Clergy, & the Laity. The Clergy, or the Church of England.

the *Lords Spiritual*, the *Lords Temporal*, and the *Commons* of *England*. But the fundamental mistake of our Learned Author is, that he has joyned those two sorts of Lords (whose very character shews them to be of a distinct species, though as to the publick Welfare and the King's Service they ought to be of one and the same interest) into one Estate, and to make up the third Estate, thought himself obliged to bring in the *King* himself for one, who is Lord paramount over all the three; and

most probable ground
in our late Civil Broils.

make one of the three Estates, as they fancy he doth, and hath (as they do from thence conclude he hath no more) but a *co-ordinate* power with both or either of the other two Estates ; that then it is lawful for both or either of those Estates, in case of publick grievance to quarrel the King (their *co-ordinate*) if he will not give way to their redress ; that is, if he will not consent to do what they would have him to do ; and upon his refusal of so doing, to raise War against him, to sequester and murder his Loyal adherents, to destroy his Royal

him, to leueteer and murde his Loyal adherents, to detroy his Royal Person; and finally, if he escape the hazards of Battel, when they get him into their hands, to bring him to account for a pretended male-administration, and the violation of a trust, which God and not the People put into his hands ; and having gone so far , that they may, if possible secure themselves, to put the Monarch to death, and to extirpate Monarchy it self. This was the ground and method of our late Republican policy

policy and practice. Wherein yet they did not foresee what examples they set against themselves, supposing this Doctrine of the *three Estates* in their sense to be true, and that, *King*, *Lords* and *Commons* had an equality of trust and parity of power, that the same outrage, which the *Rump-Commoners* acted against the King, to the destroying of him, and against the *Lords*, to the outing of them, and voting them useless and dangerous (as to their share of Government) might one time or other be more plausibly promoted, and more effectually put in execution by one or both of the other two *Estates*, with the help and assistance of great numbers of the *Commoners* (as there ever will be in such National divisions) against themselves and all men whatever of such pernicious and destructive principles. No. This false Doctrine, I hope, will never obtain among us; and our *English Government* is so well constituted, that our *Lords Spiritual* and *Temporal* and our worthy *Commoners*, will find it the interest of themselves and their posterities, that they will ever have that duty and deference to our *Sovereign*, as may secure Him and Us, and discourage the designs, and defeat the attempts of all such as wish ill to his honour and safety, or to the publick peace. Besides, is it rational to imagine, that the *King*, whose absolute right by Law it is, to convene the *Estates*, when and where he thinks fit, to call and dissolve *Parliaments*, as he pleases: in a word, that He, in whose Name all *Justice* is administered, in whose Hands the *Militia* is, and by whose Authority alone the Subjects can take up *Arms*, should stand only in a *Co-ordination* of power with any other persons whatsoever or however assembled or associated within his Dominions? This flaw I could not but take notice of in our Great Author, and that only with an intention to undeceive the unwary Reader, and not to reflect upon his Memory, who though he kept along a great while with the *Long Parliament*, yet never appeared in action for them, that ever I heard, much less used or owned that virulence and violence, which many others of that ill Body of men judged necessary for their proceedings.

C H A P. XX.

Pag. 96. lin. 15. *Alderman of England.*] The word *Alderman*, in *Saxon*, *Caldorman*, hath various acceptations, so as to signifie all sorts almost of Governors and Magistrates. So *Math. 20. 25.* the *Princes of the Gentiles*, in the *Saxon* translation are called *Caldormen*; and *Holofernes*, I remember, the General of the *Affrian Army*, is in an *Old English* Translation called the *Alderman of the Army*. So *Ethelstan* (whose younger Son this *Ailwin* was) being Duke or Captain General of the *East-Saxons* is in this Book of *Ramsey* styled *Alderman*. The most proper importance of the word bears up with the *Latin Senator*, i. e. Parliament-man; as the Laws of *S. Edward* make out. "In like manner, say they, heretofore among the *Britons*, in the times of the *Romans*, in this Kingdom of *Britannia* they were called *Senators*, who afterwards in the times of the *Saxons* were called *Aldermen*; not so much in respect of their Age, as by reason of their Wisdom and Dignity, in that some of them were but young men, yet were skilled in the Law, and beside that, were experienced persons. Now that *Alderman of England*, as *Ailwin* here was, had to do in affairs of Justice,

Justice, appears by the foresaid Book of *Ramsey*, where it is said, that *Ailwin* the Alderman and *Ædric* the Kings Provoft fute Judges in a cer-
tain Court. The *Alderman* of the County our Author makes to be the
same as the Earl or Lord of the County, and *Spelman* faith, it is hard to
distinguish, but at length placeth him in the middle betwixt the Count
and Viscount. He and the Bishop kept Court together, the one for
Temporals, the other for Spirituals. The Title goes lower still, to de-
note a Mayor or Bailiff of a Corporation, a Bailiff of a Hundred, &c.

Lin. 30. *Healf-koning.*] It was an oversight or slip of memory in
our Author, to say, that *Ailwin* was so called; when the Book of
Ramsey tells us, it was his Father *Aethelstan*, who was of that great
power and diligence, that all the busines of the Kingdom went through
his hands, and was managed as he pleased, that had that Nick name
given him therefore.

Lin. 36. *The Gravess.*] Our Author makes them subordinate to the
Aldermen of Counties: but in the Laws of the *Confessor* they appear
to be muchwhat the same. There we read, "And as they are now
"called *Greves*, who are put in places of Rule over others, so they
"were anciently among the *Englif* called *Ealdermen*. Indeed, the
word *Greve* or *Reev* (for it is all one) is of as various use, as that
other of *Alderman* is. In *Saxon* it is *gerefæ*, from *gerefæn* and *reasen*,
to take or carry away, to exact or gather. Whence this Officer
(*Graphio* or *Gravius* from the *Saxon*) is in other *Latin* called *Exactor*
regius; and by reason that the *Sheriff* gathered the Kings Fines and
other Duties, and returned them to the Exchequer, he was called the
Shire-greve or *Shire-reev*, that is, the Gatherer of the County. But
the truth is, that *Greve* or *Reev* came at last in general to signifie any
Ruler or Governour set over any place almost whatever; as the same
word *Grave* doth among the *Dutch*. So a *Shire-greve*, or *bibgerefa*,
the High Sheriff of a County; a *Post-greve*, the Governour of a City
or Port. So the Lord Mayor of *London* was called formerly. *Tun-*
greve, the Bailiff of a Town or Mannor. Sometime *Greve* is taken
for a Count or Earl, as *Alderman* is.

C H A P. XXI.

Pag. 98. lin. 22. *For Toll and Gabell.*] In the *Latin pro theolonio C-*
gablio. Now *tolonium*, from the Greek *τολωνίον*, properly signifies the
place where the Officers of the Customs receive the Kings duties; but
is used also for a duty paid for the maintenance of Bridges and River-
Banks. So *Hotoman*. But in our Law it is taken for the *Toll* of a Mar-
ket or Fair. And *Gabulum* or *Gabellum*, a *Gabell*, from the *Saxon* *gasfol*
or *gasfel*, signifies any Impost upon Goods; as that in *France*, upon
Salt, &c. also Tribute, Custom, any kind of Tax or Payment, &c.

Lin. 32. *Through the Streets of Coventry.*] There is a famous Tra-
dition among the people of that Town concerning this matter, that
the Lady being to ride naked, only covered all over with her hair,
had given order for the more decent performance of her Proceſſion,
that all the Inhabitants should that day keep their Shops and Doors
and Windows shut. But that two men tempted by their Curiosity
to do what fools are wont to do, had some such penalty, I know not
what it was, inflicted upon them, as *Atleon* had for the like offence.

And

And they now stand in some publick place cut out of Wood or Stone, to be shewn to any stranger that comes thither, like the Sign of the Two Logger-heads; with the same Motto belike, *Nous sommes trois.*

Pag. 99. lin. 7: *Brought in my Court a certain Toper.*] In the Latin, *attulit in curia mea quandam Toper.* I know what the adverb *Toper* signifies among the ancient Latines; but what the word means here, I confess, I am in the dark. It doth certainly stand for some thing (I was thinking a *Taper*) which he brought with him into Court, and sware upon it, as he should have done upon the holy Gospels. I cannot imagine, that by *quandam Toper*, should be intended some Woman or Girl, whose Name was *Toper*; whom he brought along with him, and in defiance to the Court, laying his hand upon her, took his Oath as formally, as if he had done it upon the holy Evangelists.

Reader,

Reader,

One thing I forgot to acquaint thee with in the Preface, that, whereas the Author himself had divided each Book into several Sections, which were very unequal and incommodious, I thought it much more convenient for thy ease and profit, to distribute them into Chapters; together with the Argument or Contents of each Chapter at the beginning; and withal, that no one may complain, that I have injured the Author, by altering his Method, I have left his Sections also marked with a Numeral Note 1, 2, 3, &c. on the side of the inner or outer Margin.

FINIS.

E R R A T A.

IN the Translator's Preface, p. 4. l. 15. r. (*and hath that of crabbed in it beside*)
and as to the method is so intricate.

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I
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EPIC

B

COLLECTED

BY J. C. B.

IN THE

YEAR 1787

WITH A

NOTE

ON THE

POETRY

OF ENGLAND

BY J. C. B.



TO THE READER.



HIS *Appendix* or Addition to what had been formerly collected by others, of our ancient Constitutions, needs no farther Recommendation, than the great Name and Learning of the Author: It was an *Essay* of his younger years, and one of the fruits of his first and earliest Inquiries. The Reader will here meet with the true Original (as well under the *Roman*, as the *Saxon* and *Norman Governments*) of several of our Laws which are now in force, and the Mistakes in *Polydore* and others, discovered: The famous Constitutions of *Clarendon* (so much opposed by *Becket*) faithfully recited, and purged from the Errors which had crept into those Copies formerly published: An account of the *Magna Charta* of King *John*, and the differences between it and that granted by his Son *H. 3.* which we

To the Reader.

have in the Fore-front of our Printed Statutes : A Correction of our printed *Charta de Foresta*; with other Curious and Judicious Remarks upon these Subjects, not heretofore extant ; which it is not doubted will for their own sake, as well as their Authors, find a welcome Reception from all knowing Persons, especially from the Learned Professors of our *English Laws.*

)

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CHAP. I.

From the first supposed Inhabitants and Britains until Julius Cæsar.

Ef all published Authority were a legitimate Brother to Truth's certainty, then could I affirm, that their common Father, old Time, once saw a Samothean race in this Isle of Britany. The Italian-bred-Chaldee Berosus mentions one Samothes, Brother to Gomer and Tubal, of Japhet's line, to be Author of the *Celtes*, which inhabited (with other parts of *Europe*) that of *Gaule*, which we now call *la France*: and his Commentator *Annius de Viterbo* thus addeth, *Samothes fuit frater Gomeri atque Tubalis ex Japete patre, à quo primum Britones, inde Galli, Samothei dicti fuerunt: & præcipue Philosophi & Theologi Sectatores ejus.* These Samotheans, by the testimony of Aristotle and Seicon, *divini atque humani juris peritissimi, & ob id religioni deditissimi, & propterea Samothei (rather Semnothei) appellati*, under the providence of these and their race was the Law-government of the State, until that *Trojan* celebrated branch, *Brute*, entred the Isle: who composed a Book intituled *Leges Britonum*, collected out of the *Trojan* Laws. But to ruminante a little upon that *Saturnian* Age, and omit all Shadow-fights touching controverted *Brute* (his supposed existence and fortunes) it may be not without good reason doubted, whether any such Laws of *Troy* were, out of which others might be extracted. Nor will they peradventure upon examination (excepted only some Customs of Religious Rites) appear more certain in particular, or more true in general, than those of *Aristophanes* his *Nephelococcygia*. Times so near the Golden Age (when as

V. Sr. W. Ra.
leigh fol. 118.

Beros. antiqu.
Chald. lib. 5.
& ad eum
Annius de
Viterbo.

Diog. Laert.
in vita Philo-
sop. lib. 1. &
vide Basinc-
stocke hist.
lib. 1.
Flor. hist.
atrat. 3. hist.
pag. 18.

Georgic. 1.

Nec signare quidem, aut partiri limite campum—

Senec. Epist.

Nec cuigam (as Seneca hath it) aut animus aut injuria aut causa have left few notes of expressly binding Laws, the main Government consisting in the arbitrary disposition of those, in whom being chosen as Princes for their eminency in Justice, and consequently in all other Vertues (as *Deioces* was of the *Medes*) it was rather an Office, than a Title of Vignity, to undergo the style of Monarch. And although it be reported in *Plato*, That *Talus* ('twixt whom and *Rhadamanth*, the *Cretique* Justice was by *Minos*, Jupiters own Son, then King of *Crete*, divided) thrice every year did make his Circuit, for maintenance of such Laws, as were established, and in Brazen Tables registered; one of which (somewhat to particularize) was an Edict against Drunkenness in merry meetings; so that Constitutions in written Tables may thus derive their pedigree from the most ancient remembrance of Grecian discoveries (*Ceres* and her *Thesmophoria*, with all such like omitted) yet upon that common Epithet of *Agamemnon* in *Homer*, which saluteth him Ποιάρα Δαῶν, i. e. Shepherd of the people, where the phrase of Jove's free gift to Princes and Judges of

Iliad. 1. & sa.
plus alibi.

—— Σεῦσθεν τὸν δίους.

Joseph. contra Appion. lib. 2.
Plutarch. in lib. de Homer.
Odysseus. &
Hesiod. in Theolog.
Aeneid. 5 & 7.

Summa facili-
citas erat gen-
tium in qui-
bus non pote-
rat potenti-
esse nisi me-
lior. Senec.
Epist. 91.
L. 2. ff. orig.
juris.

Ranulph.
Cestren. in
polychronico.
Galfred. Mo-
numeth. lib. 1.
cap. 15. &
Matth. West.
mon. st. fo. 52.
Camden in
Rom. in Brit.

* V. Spelmans
Gloss. del'ey
Molmutii, tit.
Lex. 441.

is very frequent, the word νόμος, *lex*, being long since observed not only to be not found in any of his works, but also to have been of later birth than his Age permitted, (unless the contingency, which *Euregia*, coming from the same Theme, both by him and *Hesiod* remembred, hath with it, perswade the contrary, and upon the ordinary phrases in *Virgil* of *Jura vocatis dare populis*, and such like, applied to *Trojan* Princes) we may with probability enough conjecture that their Laws, being, as the *Platonists* term it, secunde *Veneris*, were always closely folded, rather within the treasury of his breast, which was only therefore greater than other, because he seemed best of them all, than published in enduring Tables, to be observed as dumb Magistrates; Et quidem initio Civitatis (saith *Pompinus*) *populus sine certa lege, sine certo jure agere instituit, omniaque manu Regis gubernabantur*. But from this c.gression into the way again.

One of this Succession *Dunvallo Molmutius*, instituted (as they write) ut aratra, templa viaque ad Civitates ducentes immunitate confugi gauderent. Verum quia succedente tempore de viis (cum non essent certis limitibus distincte) orta esset dissensio, Belinus Rex filius predicti *Molmutii*, ad subducendum omne ambiguum, Quatuor regales vias, omni privilegio munitas, per Insulam sterni fecit: *Fossam* scilicet, *Watling streete*, *Ermung-streete* & *Ikenild-streete*; which rather (by *Camden's* Judge-
ment) were the *Romans* works, as out of *Tacitus*, *Beda*, and other Te-
stimony he collecteth. *Hic leges* (meaning *Dunvallo*) saith *Jeffrey*
of *Monmouth* que *Molmutina* dicebantur, inter Britones statuit, que usque ad hoc tempus inter *Anglos* celebrantur. Statuit siquidem inter ca-
teria, que multo post tempore beatus* *Gildas* scripsit, ut templa Deorum &
Civitates talem dignitatem haberent, ut quicunque Fugitivus sive reus, ad ea confugeret, veniam coram inimico suo haberet. Statuit etiam ut vie,
que ad predicta templa & Civitates ducebant, necnon & aratra colonorum,
eadem

eadem lege confirmarentur. Of the Gynæcocracy of *Martia*, Wife to King *Guinthelin*, a Woman very learned, thus speaks the same Author; *Inter multa & inaudita, que proprio ingenio invenerat, invenit legem, quam Britones Martianam vocaverunt.* *Hanc etiam Rex Aluredus inter ceteras transtulit, quam Saxonica lingua Marchenlage vocavit;* which name by our great English Antiquary, is rather deduced from the *Mercii*, whose limits (meæyc in Saxon signifying a limit) adjoyned in some part to all the other Kingdoms of the Germans here established; and they thence so denominated. I could wish for a sight of Jupiter's *Diphtere*, or an Oracle from *Apollo*, that so, resolution might be had touching the certainty of these reports, whether fabulous, or sealed with the stamp of a true History. The main Authors are that *Chaldee* Priest and the *Arthurian Jeoffrey*; both exceedingly suspected, but especially the first, by the penetrating Judgements of most learned men. But admitting them, as your Mercurial Spirit shall move you, you have a fair passage from these Mythick reports, selected out of Bardish Hymns, unto most allowed truths of authentick Historians.

Galfred. Mo-
numeth.lib.1.
cap. 20. &
Flor. histor.
Pag. 56.

Camden in
append. ad
Cornavios.

C H A P. II.

Out of Roman Histories from Julius Cæsar to the period of Rome's Empire in this Land.

JULIUS CÆSAR (who first of the Romans set foot in this little World divided from the greater) discovered among the Gauls their order of Government, and form of deciding controversies by Law: which was wholly the office of the *Druides*, then being (as it seems) the *Togata Militia* of the State. Their Discipline, he affirms, was first found in this Isle, and hence transferred to the old Gauls: They hither always sent their youth, as to a Seminary of that Learning.

*Cæs. de bello Gall. lib. 6.
& Strabo, lib. 4. Geograph.*

I. Illi rebus divinis (Cæsar's words) intersunt, sacrificia publica ac privata procurant, religiones interpretantur.

II. De omnibus controversiis publicis privatisque constituant, (the pontifical Colledge of old Rome, after the Twelve Tables received, did as much) & si quod est admissum facinus, si cædes facta, si de hereditate, de finibus controversia est, iidem decernunt, præmia pœnasque constituant.

III. Si quis privatus, aut populus eorum decreto non stetit, sacrificiis interdicunt: h.ec pœna (yet it was but like the minor excommunicatio used in the Christian Church) apud eos est gravissima.

IV. Quibus ita est interdictum, si numero impiorum ac sceleratorum habentur; ab iis omnes decadunt, aditum eorum sermonemque defugiunt (these consequents make it as the greater Excommunication) ne quid ex contagione incommodi accipiant: neque iis potentibus jus redditur (the self same in proportion remains yet with us in practice) neque honos ullus communicatur.

V. Druidibus præst unus, qui summam inter eos habet autoritatem.

VI. Hoc mortuo, si quis ex reliquis excellit dignitate, succedit; ac si sint pares plures, suffragio adlegitur.

VII. Druides à bello abesse consueverunt, neque tributa una cum reliquis pendunt (our Clergy in effect hath retained as much) Militiae vacationem omniumque rerum habent immunitatem.

VIII. Such large Priviledges occasioned increase of their Scholars, Qui magnum (saith he) numerum versuum ediscere dicuntur. Itaque non nulli annos vicenos in disciplina permanent, neque fas esse existimant ea literis mandare, cum in reliquis ferè rebus publicis privatisque rationibus, Gracis literis utantur. Hence some infer that the Tongue of the old Gauls was Greek, but clearly that the *Druides* wrote in it: I am not perfwaded to either. Greca litera is not always Latine for the Greek Tongue; So might we say, that the Syriack Testament were perfect Hebrew, because Literis Hebraicis exaratur. As for instruments of commerce written at Marsile, iannisi (as Strabo reporteth) it proves only that a Greek Colony (for it was from the Phocians) used Greek. But Cæsar also speaks of Tables found in the Helvetians Tents, Gracis literis exaratas. We may interpret both for the Character only, which perhaps even the Gracians thence borrowed. Of this place of the *Druides* it is the censure

*Juxta item
lex civilis &
Canonica. Extra
de except
c. except (de
sacrosanct. Ec-
cles.)li. placet.*

*Strabo, lib. 4.
Geograph.*

*Cæs. de bell.
Gall. lib. 1.*

sure of a great Doctor, the Learned *Hotoman*, that *Grecis* hath crept in through fault of Transcribers; *Humeris* did in another place in the same *Cæsar* so thrust it self unto *Dextris*, as *Lipsius* makes apparent; who is clear of opinion that the whole context of his Com-

mentaries hath suffered much alteration and spoil by *Julius Cæsar* his interpolation; Nay some think they were never since the first Copy his own. But to prove with a forcible Argument, think you that Greek was so familiar with the *Druides*? Why then did *Cæsar* write in Greek to *Cicero*, to this end, that neither the Carrier, being a Gaulenor, nor other of the State, if they were intercepted, might understand them? to whose hands in time of War should they have come sooner, than to the Councils, where the *Druides* were chief? So much not amiss, because it touches the tongue of the Lawyers, used in those times.

To the former *Druidian* Orders and Constitutions are added in *Pliny*, *Strabo*, *Marcellinus*, *Lucan*, *Tacitus*, and others, divers Rites of Religion and Philosophy, which taste much of *Pythagorean* doctrine, worthy of observation, and applicable as well to this Isle, as any part of *Gaul*. For as much as not only the Infancy of that Sect had here its nurture, but also an identity of Common-wealth, Order, Language and Religion, between the old *Gauls*, and our *Britains*, is by learned *Camden* with sufficient reasons of strong proof, in his excellent Chorography of this Country, declared. Fit enough therefore is it to conjoyn also the Municipals of the *Gauls*, which by the same authority were scarce different from the *Britiib*.

IX. *Suos liberos nisi cum adoleverint, ut manus militiae sustinere possint, palam ad se adire non patientur.*

X. *Viri quantas pecunias ab uxoribus dotis nomine acceperunt, tantas ex suis bonis, estimatione facta, cum dotibus communicant; hujus omnis pecunia conjunctim ratio habetur, fructusque servantur; uter eorum vita superaverit, ad eum pars utrinque cum fructibus superiorum temporum pervenit.*

XI. *Viri in uxores, sicuti in liberos, vita necisque habent potestatem;* Here John Bodin blames Justinian for confining this power only to the Romans.

XII. *Cum paterfamilias illustriore loco natus decessit, ejus propinqui convenient, & de morte, si res in suspicionem venit, de uxoribus in servilem modum questionem habent; & si conspertum est, igni (for a Woman to kill her Husband is now petit-Treason; and she suffers pains of death by fire) atque omnibus tormentis exercutias interficiunt.*

XIII. *Servi & Clientes quos ab iis dilectos esse constabat, justis funeribus confectis, una cremabantur.*

XIV. *Sancitum si quis quid de rep. à finitimis rumore aut famâ accepit, uti ad magistratum deferat, neve cum quo alio communicet.*

XV. *Magistratus, que visa sunt, occultant, queque esse ex usu judicaverint, multitudini produnt.*

XVI. *De repub. nisi per Concilium loqui non conceditur.*

XVII. *Plerique cum aut ære alieno, aut magnitudine Tributorum, aut Injuria potentiorum premuntur, sese in servitutem dicant Nobilibus: In hos eadem sunt jura, que dominis in servos.*

XVIII. *Armati, ita mos gentis erat, saith Livy, in Concilium venerunt.*

XIX. In

Hotoman in Franzag. cap. 2.

Absolvent te Lectori si consulas, Aldus Manutius ad lib. 6. Cæfaris, Hotomannus in Franco-galia, Paulus Merula in Cosmogr. part. 2. lib. 2. cap. 15. & de ceteris, qua hic ad Cæarem, Justus Lipsius in Comm. ad Tacit. Hist. lib. 1. sect. 100. & in quest. Epistolica. lib. 2. cap. Elect. lib. 2. cap. 7.

Cæsar de Bell. Gall. lib. 5.

In Prim. Incol.

Bodin. lib. 1 de rep. ca. 4. Just. insti. tit. de patria potestate.

*Inde W. 272.
27b.
Liv. lib. 31.*

Plutarch. lib.
de virtut. Mul.
Women's rule.
Tacit. in vita
Jul. Agricola
& vide Aristot.
Polit. lib. 2.
cap. 7.

Cæsar, lib. 5.
de bell. gall.
Mon. 1.
Cambd. 29.

Timon apud
Athen. lib. 12.
& 13. Diplo-
sophist.

Dio Cæs. hist.
Rom. lib. 60.

Senec. in Odis.
act. 1.

XIX. In respect of quiet composition of seditious tumults among themselves, made by intercession of their weaker Sex, a custome grew among them (Plutarch is my Author) that Women also had prerogative in deliberative Sessions, touching either Peace-government or Martial affairs, and *Sexum* (saith Tacitus of the Britains) *in imperiis non discernunt.*

But Cæsar is not without something, which expressly is attributed to our ancient Britains.

XX. Utuntur numero æro aut annulis (some read *laminis*) ferreis, ad certum pondus examinatis.

XXI. Leporem & Gallinam & Anserem gustare fas non putant; hacten alunt animi voluptatis causa.

XXII. Uxores habent Deni (no more disparagement be it to them, than the indistinct and open carnal Congress reported of the *Thuscans*, the best part of the old *Italians*, or that of the *Athenians* before the Cecropian alteration) duodenique inter se communes, & maxime fratres cum fratribus, & parentes cum liberis; sed si qui sunt ex his nati, eorum habentur liberi, à quibus primum virgines quaque dulce sunt.

Howsoever Julius his imposed Tributes did in some degree diminish their publick liberty; yet that under him, *Octavian*, *Tiberius*, and *Caigula*, they were, in respect of any State-innovation, *ATTONOMOI*, i. e. using their own Laws, is collected out of Dio's Roman History. He speaking of *Plautius* (Lieutenant here to the Emperour *Claudius*) his victorious success against *Togodunus* and *Caractacus*, affirms their ancient Aristocracy, without subjection to strangers, as yet continuing: *Hous & (saith he) οὐ δύορους ἀλλ' ἀποτελεῖσθαι τηρούμενοι.* i. e. They were not free to live at pleasure of the multitude (not free from superior Government) but subject to divers Kings, so that until that time containing their plurality of narrow territoried Princes, they were truly free from all foreign imposition of Laws; which is expressly affirmed in that of *Seneca* the Tragedian, speaking thus of *Claudius*, in the Person of *Octavia* his Daughter.

*Cuique Britanni terga dedere
Ducibus nostris ante ignoti
Jurisque sui.*

But in his time their times changed, a good part of the Isle conquered, and into a presidial Province reduced. *Colonia* (so speaks Tacitus) *Camalodunum* (which was *Cunobelinus*'s Palace or Town-royal, now *Malden* in *Essex*)

valida veteranorum manu deducitur, in agros captivos subsidium adversus rebellés, & imbutendis sociis ad officia legum; The Verulanian Municipy, celebrated by our noble *Spenser*, and remembred by *Tacitus*, the chief seat of *Cassibellian*, near *S. Albans* in *Hartfordsire*.

The Roman Colonies at *Tork*, at *Chester*, (as by an Inscription of an old Coin *Camden* testifieth) at *Glocester* (proved out of an old stone in Bath-Walls by the North-gate there thus charged, DEC. COLONIÆ GLE V. VIXIT LXXXVI) compared with *Claudius* his former recited, are great Testimonies of a great alteration. For although Mu-

Tacit. annal. lib. 12. Dio Cæs. lib. 60.
Colonia hac Victricensis dicta in antiqua In-
script. apud Lip. & Camdenum.
Spens. in ruinis Temporum.
Tacit. annal. lib. 14.
Camden in Cornaviis, Dovuniis, Brigantibus.

nici-

nicipes (as Agellius hath it) sunt Cives Romani ex Municipiis, suo jure & legibus utentes, muneris tantum cum Pop. Rom. honorarii participes, yet Coloniarum alia, faith he, necessitudo est ex Civitate quasi propagata sunt, & jura institutaque omnia Pop. Rom. non sui arbitrii habent. Both, as well Municipalies as Colonies, had their *Decuriones*, *Duumviro*s, *Aediles*, *Equites*, and such like Orders, and Offices different from all Places where the *Romans* as yet had not seated their Empire. Under some of the succeeding Emperors, *Vespasian*, *Titus* and *Domitian*, was *Julius Agricola*, Father-in-Law to *Tacitus*, here *Roman Lieutenant*: through whose perswasion to civility, *Habitus* (writeth the same *Tacitus* among the *Britains*) nostri honor, & frequens toga. The somewhat younger times also saw *Papinian*, that Oracle of the *Roman Laws*, discussing at *York*, as, out of *Forcatulus*, *Camden* hath noted.

Agell. Nott.
Attic. lib. 16.
cap. 13.

When *Commodus* had the Empire, then was *Britain's King Lucius* (of Kings the first Christian) who after the receipt of that holy token of regeneration, from *Eleutherius* Bishop of *Rome*, made a second demand, which by the Pope's returned answer you shall the better understand: *Petistis* (so was his rescript, and,

Camden in
Brigantibus.

Lambard in
Archonom.

Juraque ab hac terrâ, cetera terra petet,

Ovid. 1. Fast.

was Ovid's prophecy) à nobis leges Romanas & Cesaris, vobis transmitti, quibus in regno Britanniae uti voluistis. Leges Romanas & Cesaris enim nuper miseratione Divinâ in regno Britanniae, & fidem Christi habetis penes vos in regno, utramque paginam: Ex illis Dei gratiâ, per concilium regni vestri sume legem; & per illam Dei patientiâ vestrum reges Britanniae regnum; vicarius verò Dei estis in regno. What the sequel hereof was, thus only appears: that after he had in lieu of the Archflamenſ at *London*, *Yorke* and *Caer-leon*, constituted three Archbishops, with twenty-eight Bishops in other places, making large Gifts of Possessions to their Churches, *Ecclesias* (*Matthew the Monk of Westminster* speaks it) cum suis cæmeteriis (if we may believe that then there were with us Church-Yards for Burials) ita constituit esse liberas, ut quicunque malefactor ad illa confugeret, ille ab omnibus remaneret, with which the British Constitutions and Customs have here their last limit.

Galfred. No.
numerth. lib.
2. cap. 2.

C H A P. III.

The Saxon Customes and Laws (except what is in Lambard's Archæonomy) during their Government, until the Normans.

ITALY had at length so much to do in defence of her self, that she could hardly afford help to others. Gothick incursions grew so violent and dangerous, the *Picts* and *Scots* were as troublesome to the *Britains*, who desiring aid of the *Romans*, were in their expectations frustrate: To provide therefore some other way (*Vortigern* being then King) Martial Succour against the Neighbour violence of the Northern People of this Island was requested, and obtained from *Germany*. Thence hither issued *Saxons*, *Jutes* (some will have the old name *Vites*) and *Angles*: which differed more in name, than Nation, and are in good Authors but Synonymies of the same Countrey-people. These in process of time, contrary than the *Britains* first hoped, established to themselves in divers parts of that we now call *England*, several Kingdomes, extruding *Vortigern's* posterity, and their subjects, into the Western parts, where to this day they remain. And how can we but conjecture that of particular Customes of Law-government in their own Countrey, they made requisite use in this their part of the Island? What those were, until Christianity made some abolition, may best be observed out of *Tacitus de moribus Germanorum*; who relates divers of their Customes, and Rites Religious. But at inquisition of their Superstition we aim not; their profane Laws being chiefly proposed for Collection.

De Germanis
vid. plura apud *Caesarem*
lib. 6. de Bell.
Gall. quæ verò hue non
proximè spe-
cant.

*Tacit. lib. de
morib. Germ.*

*Vide leges
Ed. Confess.
ap. Lamb.*

*Lipſ. in not.
ad Tacit. ibid.*

I. *Rex vel Princeps* (saith *Tacitus*, speaking of some of them, whose antique Reliques seem yet to continue in our Municipals) *prout etas cuique, prout nobilitas, prout decus bellorum, prout facundia est, audiuntur authoritate suadendi magis quam jubendi potestate: si displicuit sententia, fremitu aspernantur; si placuit, frameas* (of necessity you must here remember our *Wapentakes*) *conciuntur. Honoratissimum assensus genus est armis laudare.*

II. *Licet apud Concilium accusare quoque; & discrimen capitis intendere. Distinctio pænarum ex delicto, proditores & trans fugas arboribus suspendunt, ignavos & imbellis & corpore* (*Lipſius* will have it *torpore*, and shews great reason for it, in love towards his own Countrey) *infames cæno ac palude, injecta insuper cruce mergunt. Diversitas suppli- cii illuc respicit, tanquam scelera ostendi oporteat dum puniuntur, flagitia abscondi.*

III. *Levioribus delictis pro modo pænarum, equorum, pecorumque numero convicti multantur. Pars mulctæ Regi vel civitati, pars ipsi qui vindicatur, vel propinquis ejus exolvitur.*

IV. *Eliguntur in iis Conciliis & Princeps, qui jura per pagos vicof- que reddunt. Centeni singulis ex plebe Comites* (which observe to symbolize with our Hundreds) *consilium simul & authoritas adiungunt.*

V. *Nihil*

V. *Nihil neque publice neque private rei nisi armati agunt, sed arma sumere non ante cuicunque moris, quam civitas suffectorum probaverit. Tum in ipso Concilio vel principum aliquis, vel pater, vel propinquus, scuto framæque Juvenem ornant. Hec apud illos Toga, hic primus (here have you resemblance of our Kniting) juventæ honos : ante hoc domus pars videntur, mox Reipublicæ.*

VI. *Insignis nobilitas aut magna patrum merita, principis dignationem etiam adolescentulis assignant.* Note there the propagation of Gentry through true honour deserving vertue, to whose memory is dedicated that worship, which is oft-times bestowed on unworthy Posterity.

VII. *Dotem non uxor marito, sed uxori maritus (I might compare this to our most ancient and then common Dover al huis d'esglise) offert.*

VIII. To their religious Rites in Marriage-knots he adjoyns the punishment of her which violates her cholen bed. *Accisis crinibus nudatam coram propinquis expellit domo maritus, ac per omnem vicum verbere agit.*

IX. *Publicata pudicitie (understand it of unmarried Wenchess) nulla venia, non formæ, non atate, non opibus maritum invenerit.*

X. *Sororum filiis idem apud avunculum, qui apud patrem honor.*

XI. *Heredes, successoresque sui cuique liberi, & nullum testamentum: si liberi non sunt, proximus gradus in possessione fratres, patrui, avunculi;* neither until 32 H. 8. had we any Lands devisable, except by special custome binding the Common-law.

XII. *Suscipere tam inimicitias seu patris seu propinqui (our Northern deadly-feud offers it self here to be thought on) quam amicitias necesse est; Nec implacabiles durant. Luitur enim etiam homicidium certo armentorum ac pecorum numero (this interprets the were in the Saxon Laws of William Lambard), recipitque satisfactionem universa Domus.*

XIII. *Suam quisque Servus sedem, suos penates regit. Frumenti modum dominus aut pecoris aut vestis ut colono injungit; & servus hactenus paret.*

Divers others of their Manners and Customes hath the same Author; but not any, which except these recited, I think may be fitly styled Law, or constituted Order of that Nation. But to be more particular, Adam of Breme will tell us out of Einhard of the Saxons (which gave chief denomination to such Germans as floated hither) thus;

XIV. *Quatuor differentiis gens illa consistit, Nobilium scilicet & liberorum, libertorumque atque servorum.*

XV. *Legibus firmatum ut nulla pars copulandis conjugiis propriæ sortis terminos transferat; sed Nobilis nobilem ducat uxorem, & liber liberam, libertus conjugatur libertæ, & servus Ancillæ. Si vero quispiam horum sibi non congruentem, & genere præstantiorem duxerit uxorem, cum vita sue damno componat.*

XVI. *Eius gentis cum quâ bellandum fuit (this is by Tacitus in the same words repeated of the Germans) quoquo modo interceptum, cum electo poplarium suorum patriis quemque armis committunt, & victoria bujus vel illius pro prejudicio accipitur.*

XVII. Unto the times before Christianity among them was received, this is to be referred; The first Christian King Ethelbert of Kent, Inter

Hæc debemus
virtutibus, ut
non præsentes
solam illas, sed
etiam ablatas
è conspectu
colamus. St-
nec. lib. 4. de
benefic. ca. 30.

Vide Epistola
Bonifacij
ad Ethelbald.

Terre nient
devisable.

Einhard ap.
Adam. Bre-
meni in hislo.
Ecclef. cap.
5, & 6.

Bed. Eccles.
Hist. lib. 2.
cap. 5.

catera (as Venerable Bede reporteth) bana, quæ genti sue consulendo conferbat, etism de cœta illi judiciorum juxta exempla Romanorum, cum consilio sapientum instituit. Quæ conscripta Anglorum sermone, hactenus, faith he, habentur & observantur ab ea.

Malmesb. de
gesl. Reg. lib.
2. cap. 11.

And very many Constitutions yet extant, written in the *Saxon Tongue*, are attributed to *Ine, Alfred, Edvard, Athelstan, Edmund, Edgar, Ethelred* and *Cænitus* or *Knute*, translated into *Latine*, and published long since by *William Lambard*, a learned Gentleman, with the Laws of *Edw. the Confessor*, so called, *non quod ille statuerit, faith one, sed quod observaverit*; whereunto are joyned divers, with title of *William the Conqueror*, which being so there already, according to several times in one Volume for that only purpose compiled, they only shall here be inserted, which as yet lie dispersed in the old Monuments of our Historians.

Gen. cap. 31.

Rouius Win-
tonia.

* al. absolutus.

Malmesb. lib.
2. de gesl.
reg. c. 8.

Athen. lib. 10.
Deipnosoph.

Stat. 4 Jac.
cap. 5.

Ingulph. hist.
pag. 512. &
508.

Feud.lib.2.
tit.
Chart. Archi-
ep. Cant. vide
etiam Cam-
den.in Cantic
pag. 240. &
Chartam A-
E-
thelphilpi su-
per altare ob-
latam apud
Ingulph. pag.
491.

XVIII. *Totius Angliae (of King Alured so writeth Ingulphus Abbot of Croyland) pagos & provincias in Comitatus primus omnium commutavit, Comitatus in Centurias, i. e. Hundredas, & in decimas (as if he imitated Jethro Moses Father-in-law) id est, tythingas, divisit, ut omnis indigena legalis in aliquâ centuriâ & decimâ existeret. Et si quis suspectus de aliquo latrocinio, per suam Centuriam vel decuriam, vel condemnatus, vel * invadiatus, pœnam demeritam vel incurreret, vel vitaret. Praefectos vero provinciarum (qui antea Vicedomi) in duo officia divisit, i. e. in Judices, quos nunc Justiciarios vocamus, & in Vicecomites, qui adhuc idem nomen retinent.*

XIX. Of King Edgar, the Monk of Malmesbury writeth thus; *Quia Compatriote in tabernis convenientes, jamque temulentii pro modo bibendi contendenter, ipse clavos argenteos vasis affigi jussit, & dum metam suam quisque cognoscere, non plus subserviente verecundia, vel ipse appeteret, vel aliis appetere cogeret. Constraint of such as were too indulgent to the desires of their sensual appetite by ingurgitation of brain-smoking Liquors, was by the Greek Zalencus (and so received among the Locrians) no less than capital. But which hath been always so far from this State, that until the third Session of the present Parliament, not so much as any pecuniary mulct endeavoured to refrain that temporary and altogether voluntary madness.*

XX. *Nulla (faith Ingulphus) electio Prelatorum erat merè libera & Canonica, sed omnes dignitates, tam Episcoporum quam Abbatum, per annum & baculum Regis Curia pro suâ complacentia conferebat.*

XXI. *Chirographa, until the Confessor's time, fidelium presentium subscriptionibus, cum crucibus aureis, aliisque sacris signaculis firma fuerunt.*

XXII. *Conferebantur primò (faith he, but I understand it of the Infancy of the Norman state) multa predia nudo verbo absque scripto, vel chartâ; tantum cum Domini gladio, vel galea, vel cornu, vel cratere, & plurima tenementa cum calcari, cum strigili, cum arcu, & nonnulla cum sagittâ. This somewhat favours of Obertus Orto's form of investiture in his Feudals, or his of this, and differs much from our strict Livery of Seisin, which regularly ought to be made with part of and upon the Land, by gift transferred. Not unworthy (in this place) of observation is that Charter of Cedwalla King of Sussex, (as among old Monuments of evidence belonging to the Arch-bishop of Canterbury I have seen) in the Year DCLXXXVII. made to Theodore then*

then Archbishop of certain Lands, with this subscription ; *Ad eumulum autem Confirmationis, ego Cedwalla cespitem terrae predictae super sanctum altare Salvatoris posui, & propriâ manu, pro ignorantia literarum, signum sancte Crucis expressi, & subscripsi.* The like hath Camden out of a Patent made by Withered King of Kent, to a Nunnery in the Isle of Thanet. But to that form of conveyance which *In gulphus* speaks of, is thus added ; *Sed hec initio regni sui : posterioribus annis immutatus est iste modus.*

The antiquity of deeming the Queen, both as Covert, and also a sole person, with such respective admittance, as is commonly agreed upon, and the Custome of Land-forfeiture upon Felony committed, are both referred to these times. The first proved by that learned Chief Justice Sir *Edw. Coke*, out of a Gift made by *Ethelwif*, Wife to King *Burghred*, to one *Cuthwulfe* her Servant DCCCLXVIII. The other from an Example by him published of one *Ethesig*, whose Lands were forfeited to King *Ethelred*, for feloniously stealing one *Ethelwine*'s Swine.

*In Praefat. ad
lib. 6. Resp.*

C H A P. IV.

William the First: But none of that which under title of his Laws, is in Lombard.

NO sooner was the *Norman William* circled with the Crown of his Victory, but

Gervaf. Tib. de Scac.ca.32. conferas quæ è Guil.Roville Alenconiens. in Tract. de Duello transcript cap. 6. Camden in Divis. Brit.
Hoveden. pag. 343.
Roger Hoveden. in Vit. H. 2. fo.347.
Florent. Wigorn.
Domesday. 18. Will. I.
Gervaf.Tib. cap. 32.

I. *Decreuit subjectum sibi populum* (my Author is *Gervase of Tilbury*) *juri scripto legibusque subjicere. Propositis igitur legibus Anglicanis secundum tripartitam earundem distinctionem, hoc est Merchenlage* (this govern'd the Shires of *Glocester, Worcester, Hereford, Warwick, Oxford, Chester, Shropshire, and Stafford*) *Westsaxenlage* (hereby were ordered *Kent, Sussex, Surry, Barkshire, Hampshire, Wiltshire, Somerset, Dorset and Devonshire*) and *Danelage* (by it *Tork, Darby, Nottingham, Leicester, Lincoln, Northampton, Bedford, Buckingham, Hartford, Essex, Middlesex, Norfolk, Suffolk, Cambridge, and Huntingdon*) *quasdam reprobavit, quasdam autem approbans illis transmarinas Neustrie* (that is *Normandy* corruptly for *Westrie*, the opposite to that other part of the division of *France, Eustrasia*) *leges, quæ ad regni pacem tuendam efficacissimè videbantur*: which was not performed without earnest and most humble request of the *Engl.þ.* For, as honouring with respect the Northern stock, whence his blood was derived, the Danelage he preferred, as worthier and better for Government than the mere *Engl.þ.* But seeming at first inexorable, the persuasive remembrance of his Soul, which bequeathed him the Kingdom, and whose Laws they desired, being, as the best supposed motive, inserted in the Petitions of the conquered, he granted so much, that from that time *venerata per universam Angliam, corroborata & observata sunt, præ ceteris patriæ legibus, leges Edwardi Regis, quæ prius inventæ* (it is *Roger of Hoveden's Report*) & constituta erant in tempore *Edgari, avi sui*.

II. *Fecit describi omnem Angliam*, (the substance hereof is in most of the Monkish histories, but *Florence of Worcester* is the Author I now use) *quantum terræ quisque Baronum suorum possidebat, quot feudatos milites, quot carucas, quot villanos, quot animalia; imò, quantum vive pecunia quisque possidebat in omni regno suo, à maximo usque ad minimum, & quantum redditus quæque possessio reddere poterat.*

This Inquisition was returned into his Exchequer, and is a Book at this day there remaining, *Pro sua generalitate omnia tenementa totius terræ integrè continentur*: it is called *Domesday*, i. e. the Day of Judgment, as the Abbot of *Crowland*, and *Gervase of Tilbury* have left written, *Ob hoc (saith Gervase) nos eundem librum Judiciarium nominamus, non quod in eo de propositis aliquibus dubiis feratur sententia, sed quod à prædicto judicio non liceat ullà ratione discedere*. A description of it in an old *English* Historical Poet, is thus clad in Rhythmes.

The

The R. William vox to wite the worth of his londe
 Let enquest ureitliche thoru al Engelonde,
 Hou moni plou lond, and hou moni biden also
 Were in euerich fire, and wat hii were wurth yero :
 And the rents of each toun, and of the waters echone,
 That wurth, and of woods eke, that there ne bileued none,
 But that he wist wat hii were wurth of al Engelonde,
 And wite al clene that wurth thereof ich understand
 And let it wite clene inow, and that scrit dude iwis
 In the Clesoxie at Westminster there it put is.
 So that bre Kings luth, when hii ransome toke
 And cedy wat folc might giue, hii sond there in yor boke.

Rob. Glocest.
in hist. Poet.

Nor a much unlike description in later times under *Hen. 8.* (as a preparatory to the levying of that intolerable demanded Subsidy of DCCCL) was either finished or attempted : as by a Warrant from the Commissioners directed to a Constable of a Hundred, with charge of information, reported by *J. Stow*, is more largely declared.

III. Of Church-livings and Ecclesiastical fees *Matthew Paris* hath thus recorded ; *Episcopatus & Abbatias omnes, que Baronias tenebant, & etenim ab omni Seculari libertatem habuerant, sub servitute statuit militare, in rotulans singulos Episcopatus & Abbatias, pro voluntate sua, quot milites sibi & successoribus suis, hostilitatis tempore, volnuit à singulis exhiberi.*

Matthew. Paris
in Guil. I. pag.
6.

IV. *Exclusis hereditate avita Anglis, agros* (learned *Camden* hath delivered it) *& pradia militibus suis assignavit, ita tamen ut dominium directum sibi reservaret, obsequiumque clientelari jure sibi & successoribus devinciret : id est ut omnes in feodo, sine fide teneret, & nulli prater Regem essent veri domini, sed potius fiduciarii domini, & possessores.*

Camden. in
Norm. astipu-
latur Matth.
West. Flor.
Hist. lib. 2.

V. *Gervase of Tilbury* in a Discourse of the Trial of the purity of Silver paid in ancient time into the Exchequer by weight, affirmeth that by Tradition it was received for truth, that *in primitivo regni statu, post conquestione, no Rents were paid to the Crown in Money : Sed sola (faith he) victualia solvebantur, ex quibus in usus quotidianos domus regiae necessaria ministrabantur* : and somewhat after, *Toto igitur Willielmi primi tempore perseveravit hæc institutio usque ad tempora Regis Henrici filii ejus* (which was *Henry the first*) *aded ut viderim ego ipse* (he lived under *Henry the second*) *quosdam, qui victualia, statutis temporibus, de fundis regiis, ad Curiam referebant. Certum quoque habebant Officiales domus regiae, à quibus comitatibus triticum, à quibus diverse species carnium, & equorum pabula debebantur. His vero solutis secundum constitutum modum cuiusque rei, regii officiales computabant Vicecomitibus, redigentes in summam denariorum, pro mensurâ videbant tritici ad panem centum hominum, solidum unum, pro corpore bovis pascualis solidum unum, pro ariete vel ove IV. denarios, pro prebendâ XX. equorum similiter IV. denarios* ; But through the grievous complaints of Country Husbandmen, *oblatis vomeribus in signum deficiens agriculturæ*, respective calculation was made under *Henry Beaufort*, and every particular Tenants services reduced to a certainty of Silver, *De Summa vero Summarum qua ex omnibus fundis surgebat in unoquoque comitatu, constituerunt Vicecomitem illius Comitatus ad Scaccarium*

Gervaf. Tilb.
de Scaec. ca. 22.

Seccarium teneri, addentes ut ad Scalum solveret. More special form whereof the same Author hath largely reported.

Ingulph. hist.
fo. 512.

VI. *Chirographa chartas vocabant, & chartarum firmitatem cum cereâ impressione per uniuscunusque speciale sigillum sub instillatione trium vel IV. astantium, confidere constituebant.*

St. 26 E. 3.
cap. 15.

VII. *Anglicum idioma tantum abhorrebat, quod leges terra statutaque Anglicorum Regum Gallicâ lingua tractarentur* (Pleadings until reformation in time of E. 3. remaining in the same Tongue) & pueris etiam in Scholis principia literarum Grammatica Gallicè ac non Anglice tradiderentur. Modus etiam scribendi Anglicus omittetur, & modus Gallicus in Chartis & in libris omnibus admitteretur: Thus to be Frenchified grew so common, and before all English Titles so respectfully alone honoured, that *Ulstan Prelate of Worcester* in the red King's time, was for his ignorance in that Tongue chiefly deposed from his Bishoprick.

Math. Paris.

Polydor. Virg.
hist. lib. 9.

Hen. Hunting.
lib. 6. hist. fol.
212.

Bract. lib. 3.
tract. de Cor.
ron. cap. 28.

Polydor. hist.
lib. 9. Lamb.
explicat. verb.
Camden in
Norman D.
Ed. Coke in
Tract. ad
lib. 3.

VIII. *Cervum vel Capreolum capienti oculi erubebantur.*

IX. The Law of *Coverfeu* (the name yet remaineth) that by ringing a Bell at Night, all Lights and Fire in every House should retire from our appearance, acknowledgeth him as first Institutior.

X. *Si aliquis quempiam* (it is in *Henry of Huntingdon*) *quacunque de causâ peremisset, capitali subjacebat sententia.*

XI. *Si aliquem* (I would read it *aliquam*, perswaded by what I find in *Bracton's Treatise of rape*) *vi oppressisset, genitalibus privabatur armis.*

XII. If we durst believe the *Italian Polydore*, here should succeed an Institution of Sheriffs, and Trial by Jury of XII. Touching the last, *Camden* and *Lambard* out of the *Saxon Laws of Etheldred*, have convinced him of an error too fairly flourished with braving terms. For the first, and both since them the right H. the L. *Coke*. But what else he hath of any probability you thus receive.

XIII. *Constituit ut quater quotannis in multos dies conventus celebrarentur eo loci quo ipse fieri juberet, quibus in conventibus Judices sedibus discreti forum agerent, jusque populo dicerent.*

XIV. *Alios instituit Judices, qui sine provocatione jurisdictionem ac iudicia exercent, à quibus, uti à sinu Principis, cuncti Litigatores eò confluentes iura peterent, & ad eos suas controversias referrent.*

XV. *Praefectos alios constituit, qui maleficia vindicanda curarent. Hos Justiciarios pacis nuncupavit.* Yet I cannot so soon think that name to be literally so ancient under his favour, with whom too curious in a strange state, the kind Laws of religious hospitality may without injustice dispense.

C H A P. V.

What was received under William le Rous.

VAin it were to expect any good Constitutions of *William the Second*, *Omnis legum filius iustitia, causisque* (saith *Florence of Worcester*) *sub iustitio positus; sola in principibus imperabat pecunia.*

I. *Polydore* attributeth to him the original of that custome, whereby his Successors claim profits or First-fruits of vacant Bishopricks and Monasteries of the Patronage of the Crown. Indeed it is true and apparent, that he had a special gift of delaying new Elections for prorogation of his gains. And at his Death were in his hands the Temporalities of *Canterbury*, *Winchester* and *Salisbury*, and of Abbies that number quadrupled.

*Polydor. lib.
10. hist.*

Mart. Paris.

II. *Publico* (writeth he) *edicto vetuit unumquemque sine commatu suo ex Anglia egredi.* That *Archbishop Anselme* was enjoyned under no small pain, that he should not pass the Seas, to visit Pope *Urban* under this Prince, is true and plain enough; but for any such general Edict, I know no better authority, his being in this, as in other things, suspicioius: as yet my belief is, that the constitution of *non Aler ouster le Mere*, is of some later birth.

III. *Venationes quas Rex primo* (the words are *Malmesburies*, but read *primus*) *ad eò prohibuit, ut capitale esset supplicium prendisse Cervum.*

*Malmesb. lib.
4. de gest. reg.*

C H A P.

C H A P. VI.

Henry Beauclerc restored and invented Common Liberties.

Matth. Paris,
pag. 74.

Reformation was needful by the succeeding *Beauclerc*, of the common injustice practised throughout the Kingdom, especially by a delegation of exacting authority made to one *Ranulph*, afterwards Bishop of *Durham*, by *le Rous*: and was thus endeavoured. Immediately after his Coronation Charters of State-amendment were by publick authority sent into every County with particular Customs expressed, allowed, abrogated or altered in them. That which was directed to *Hugh of Bockland*, Sheriff of *Hereford*, reported by *Matthew Paris*, after Church-liberty confirmed, *Ita quod nec eam vendam, nec ad firmam ponam, nec mortuo Archiepiscopo, vel Episcopo, vel Abbe, aliquid accipiam de domino Ecclesie, vel de hominibus, donec successor in eam ingrediatur*, thus provides for the Subject;

Omnes malas consuetudines, quibus regnum Angliae injuste opprimebatur, inde aufero. Quas malas consuetudines in parte hic pono.

I. *Si quis Baronum meorum, Comitum, vel aliorum qui de me tenent, mortuus fuerit, Heres suus non redimet terram suam sicut facere consueverat tempore patris mei, sed justâ & legitimâ relevatione relevabit eam.*

II. *Homines Baronum meorum legitimâ & justa relevatione relevabunt terras de dominis suis.*

III. *Si quis Baronum, vel aliorum hominum meorum, filium suum tradere voluerit, sive sororem, sive neptem, sive cognatam, mecum inde loquatur; sed neque ego aliquid de suo pro hac licentia accipiam, neque defendam quin eam det, excepto si eam dare voluerit inimico meo.*

IV. *Si mortuo Barone vel alio homine meo filia heres remanserit, dabo illam cum consilio Baronum meorum cum terra sua.*

V. *Si mortuo marito uxor ejus remanserit, & sine liberis fuerit, dotem suam & maritagium habebit, dum corpus suum legitimè servabit: & eam non dabo nisi per secundum velle suum, & terra liberorum Custos erit sive uxor, sive alius propinquior, qui justus esse debet.*

VI. *Principios homines mei similiter se contineant erga filios & filias & uxores hominum suorum.*

VII. *Monetarium commune quod capiebatur per Civitates vel Comitatus, quod non fuit tempore Ed. R. hoc ne amodo fiat, omnino defendo.*

VIII. *Si quis captus fuerit, sive monetarius sive alius, cum falsâ monetâ, justitia recta inde fiat.*

IX. *Si quis Baronum vel hominum meorum infirmabitur, sicut ipseabit, vel dare jussit pecuniam suam, ita datam esse concedo; quod si ipse, preventus vel armis vel infirmitate, pecuniam suam nec dederit, nec dare disposuerit, uxor sua sive liberi, aut parentes, & legitimi homines sui pro animâ ejus eam dividant, sicut eis melius visum fuerit.* Somewhat later times admitted the disposition of Intestates Goods, and Probate of Testaments,

v. Glazvill,
lib. 7. cap. 8.

Testaments, to be in Episcopal Jurisdiction. John Stratford in one of his Provincial Constitutions of Church-liberty; and Fairefax a Common-Lawyer under Richard the Third, affirm that Power in Ecclesiastick Courts to have been in ancient time (for the Civil Law it self in express Text refers it to the Lay Magistrate) by Act of Parliament ordained.

Lind. provinc. constit. de immunit. Eccles.
lib. 3. & de testament. Statutum & Ecclesiast.
2 Rich. 2. Testam. 4. v. inf. in Stephan. 1. C.
tit. de testament. l. consulta divalia v. in Johanne.
art. 15.

X. Si quis Baronum, vel hominum meorum, forisfecerit, non dabit vadum in misericordia pecuniae sue, sicut faciebat tempore patris vel fratri mei (they were the two precedent Williams) sed secundum forisfactura modum, nec ita emendabit sicut emendasset retro tempore patris mei vel fratri.

XI. Si perfidiae vel sceleris convictus fuerit, sicut culpa sic emendet.

XII. Forestis communi consilio Baronum meorum in manu mea ita retinui, sicut pater meus eas habuit.

XIII. Militibus, qui per loricas terras suas defendunt (i. e. which hold their Lands per fee de Hauberke, to be ready in a Coat of Mail for Martial Service) terras dominicarum carucarum suarum quietas ab omnibus Geldis & omni proprio Dominio meo concedo, ut, sicut tam magno gravamine alleviati sunt, ita equis & armis bene se instruant, ut apti & parati sint ad servitium meum, & ad defensionem regni mei.

V. Hotoman:
verb. feudal.
Hauberticum
feudum.

XIV. Lagam Regis Edwardi vobis redbo, cum illis emendationibus quibus pater meus eam emendavit (you have them in *Lambard*) consilio Baronum suorum. Thus far out of that transcribed Charter.

XV. Rapinas Curialium, furta, supra, editio compescuit, comprehensis oculis cum testiculis evelli precipiens. Williams of Malmesbury is hereof Author; but Florence of Worcester, and Roger of Hoveden, that for Theft his punishment was, as now by Hanging, Death; but for maintenance of Malmesbury's report, I remember a miracle reported out of a Manuscript in *Fox* his Ecclesiastical History, of one *Eilward* of King's Weston in Bedfordshire, attainted in time of *Henry Fitz l'Empres*, for stealing a pair of Hedging Gloves, and a Whetstone, and having by execution lost his Eyes and Genitals, had through devout prayer at *Tho. Becket's Shrine* in Canterbury, restitution (I fear the Monk that wrote it, might have had a Whetstone without stealing) of whatsoever Members and Faculties were by that inflicted punishment, taken from him.

Malmesb. lib. 5. de gest. reg.

Atque alibi antiquitus quod docent Isocrates in oratione contra Lochit. Sen. Epist. 7. Lamprid. in Alex. Severo & alii, ceterum an in bonos Mores, Remque publicam conducat, disputant: quin & ausi sunt negasse, Fribus in lib. de Rep. Tho. Morus, in Utopia, &c.

Fx lib. Monarch. Cant. de Mirac. B. Tho. apud Foxum. in hist. Eccles. lib. 4. fo. 228.

XVI. Contra Trapezitas (quos vulgo monetarios vocant) præcipuam Malmesbur. sui diligentiam exhibuit; nullum falsarium quin pugnum perderet impunc abire permittens, qui fuit intellectus falsitatis sue commercio fatuos irrisisse: This falsifying of money by Hoveden, was loss of our Eyes and Genitals: Gemiticensis and the Monk which made the continuance to Florence of Worcester, agreeing to Malmesbury in this, that the offenders lost their right hands; but further adding that, which the first God of the Gentiles was compelled to endure, deprivation of his external parts of humane propagation.

Guil. Gemitiens. de Du-
cibus Norm.
lib. 7. ca. 23.
& Contin. ad
Florent. Wi-
gorn. pag. 498.

XVII. Statuit ut nullus obolus (the Author is Roger of Hoveden) quos & rotundos esse jussit, aut etiam quadrans, si integer esset, respueretur.

Roger de Ho-
ved. annal. 2.
fo. 270.

Malmesb. l. 5.

XVIII. *Mercatorum falsam ulnam* (Malmesbury speaks) *caſtigavit brachii ſui mensurā adhibiti, omnibusque per Angliam propositā.*

XIX. *Curiatibus ſuis ubicunque villarum eſſet, quantum à Rusticis gratis accipere, quantum & quoſo prelio emere debuiffent, edixit, transgrefſores vel gravi pecuniarum mulctā, vel vite diſpendio afficiens.*

Math. Westm.
lib. 2. Flor.
hiſt.

X X. Much stir both at *Rome* and in *England* was touching Investiture of Bishops and Abbots by Lay hands: *Anſelme*, Arch-Prélate of *Canterbury* mainly opposing himself againſt it; whose perſuasion fo at length wrought with the King, that it was permitted *ut ab eo tempore in reliquum* (Matthew of *Westminster* after others reports it) *nunquam per donationem Baculi pastoralis vel annuli quisquam de Episcopatu vel Abbatia, per Regem, vel quamlibet laicam personam, investiretur in Anglia;* *Retento tamen electionis & regalium privilegio;* Notwithſtanding this in the year C I O. C. VII. *per annulum & baculum* (as Matthew Paris tells us) was by the fame *Henry* one *Rodolph* made Arch-Bishop of *Canterbury*.

Malmesb. l. 5.
de gefſt. reg.
Mar. Paris
pag. 87.Stowzus an-
nal. p. 190.

Flor. hiſt. l. 2.

Polyd. hiſt.
lib. 11.Halicarnass.
2. antiqu. Rom.
& v. Sueton.
in Caligula
cap. 42.
Zaf. in comm.
ad lib. 2. F. de
orig. Turr.Polyb. lib. 11.
hiſt. Ang.

XXI. He restored (*John Stow* now speaks to you) to his Subjects the uſe of Lights in the night, which lights, and alſo fire, had been forbiden by his Father to be uſed, after the ringing of a Bell at eight of the Clock at night.

XXII. *Fecit omnes Milites Angliae crines ſuos ad juſtum modum abſcindere, qui priuſ longitudine capillorum* (out of *Flores Historiarum*) *cum fæminis certabant.*

XXIII. A Tribute of 3 s. of every Hide was exacted for augmentation of a Dowry for the Kings Daughter *Mawde*, to be married to the Emperor *Henry* the Fourth: whereupon, faith Polydore, *Secuti ſunt iſtud inſtitutum querendarum dotum ad collationem filiarum, ceteri deinde Reges, adeo posteritas ſuorum commodorum tenax ſemper fuit*; referring that known Service of *ayde à file marrier*, to this as the first example thereof; though the antiquity of that custom can reckon as many years as ſince *Romulus* his first inſtitution of Patrons and Clients (whence Feuds and Courts-Baron, as *Vealricus Zafius* conjectureth, by way of imitation, proceeded in following times) and no leſs the whole title thereof. And the other *à faire Fitz Chevaler, & de rançome*, are in the old *Graund Cuſtumier of Normandy*.

XXIV. Imminent peril was then, leſt French Conſpiracies ſhould get violent poſſeſſion of the Dutchy of *Normandy*; to prevent it with a ſinewy Army, *primum omnium populo imponit* (take it upon Polydore's credit) *grave tributum causâ novi belli gerendi, id quod apud posteriores Reges in conſuetudinem venit.* Of the *Norman* Line Masculine he was the laſt; and this the laſt, I make of his Laws.

C H A P. VII. Stephen of Blois.

Crashing of Armour and pronouncing of Laws, have such antipathy, that his injurious Successor, *Stephen of Blois* will put us to the charge of small room. At his Inauguration, by Oath he confirmed divers generalities for liberties, from ancient time used, of the Church, but so religiously, that, as one saith of him, He seemed to have therefore only sworn, that he might be forsworn. But of them one was especially thus:

I. *Si quis Episcopus vel Abbas vel alia Ecclesiastica persona, ante mortem suam rationabiliter sua distribuerit, vel distribuenda statuerit, firmum manere concedo: si vero morte preoccupatus fuerit, pro salute anime ejus Ecclesie consilio* (see before in the ninth of *Henry Beauclerc*) *eadem fiat distributio.*

Malmesb. l. 1;
hist. novell.

II. *Castella per singulas provincias* (saith *William of Newborough*) *studiorum partium crebro surrexerant; erantque in Anglia quodammodo tot Reges, vel potius Tyranni, quot Domini Castellorum, habentes singuli percussuram proprii numismatis, & potestatem subditis regio more dicendi juris.*

Guil. Neubri-
ge. f. lib. 1.
rer. Anglic.
cap. 22.

III. *Danegeldum* (which how it was first rated and imposed, you may find in the *Confessor's Laws*) *quod antecessores sui accipere solebant singulis annis, in eternum condonabat.* *Henry of Huntingdon* and *Roger of Hoveden* affirm it.

Huntingd. l. 8.
hist. Hoveden
part. 1. f. 276.

IV. An Ecclesiastical Synod was held at London under *Theobald of Canterbury*, the King and Noblemen being also present, *totumque illud concilium novis appellacionibus infrenaduit.* *In Anglia namque appellaciones in usu non erant, donec eas Henr. Wintoniensis Episcopus, dum Legatus esset* (which was about this time) *malo suo crudeliter intrusit.*

Ibid.

V. *Tempore Regis Stephani* (as I read in *John of Salisbury's Polycraticon*) à regno jussæ sunt Leges Romane, quas in Britanniam Dominus venerabilis Patris Theobaldi, Britanniarum Primatis asceraverat; *Ne quis libro etiam retineret edictum regio prohibitum est.* What the *Roman Laws* (if you understand the *Imperials*) had ever to do with this State as a rule for squaring our Judgements, is not only by this relation made manifest, but by an express assertion of the High Court of Parliament (which wrought wonders) under *Richard of Burdeaux*; whenas *Thomas of Woodstock*, Duke of *Glocester*, *Richard Earl of Arundel*, *Thomas Beauchamp Earl of Derby*, and *Thomas Earl of Nottingham*, appealed *Alexander Nevill* Archbishop of *York*, *Robert de Vere* Duke of *Ireland*, *Michael de la Poole* Earl of *Suffolke*, with others, of seducing the Kings facile humour to their own desires, the particulars whereof appear in the Thirty Eight Articles comprehended in the Parliament Rolls of the Eleventh of his Reign; advice being demanded touching the formality of the Appeal both of Common Lawyers and Civilians, they all agreed, —That it was insufficient in both Laws; but answer was given by the Baronage, that they would adjudge it by *Parliamentary authority*; neither would they be directed by the Civil Law, *pur ce que la royalme d'Angleterre n'estoit devant ces heures, ny à l'entent de nostre dit Seigneur Roy, & Seigneures du Parliament nng' ne sera rules ne governes per la ley civil:* and by Judgement of Exile with effect they proceeded: But this is somewhat out of the lists.

Jo. Salisburi-
enf. Polycrat.
lib. 8. cap. 22.
v. disceptati-
onem de ca-
stellis Episco-
porum apud
Malmesbur.
lib. 1. hist.
novel.

11 R. 2. Rot.
Parliam.

C H A P. VIII.

Henry Fitz-L'Empres, and his Clarendon Constitutions restored to themselves, and purged from the faults wherewith they have been published.

Adoption and right of Bloud gave, after Stephen's Death, the Crown to Henry Plantagenet Fitz l'Empres; His first care tending wholly to the good of the State, was to have the numerous increase of Castles and Forts (which in his Predecessors time through multitude of Province-Tyrants, whom they nourished, were swollen to the number of CI. C. XV.) abated; so was it by express command performed, and the Laws of his Grand-father Beauclerc likewise confirmed. A recognition also was made at Clarendon, Presidente Joanne de Oxoniâ, de mandato ipsius Regis, presentibus etiam Archiepiscopis, Episcopis, Abbatis, Prioribus, Comitibus, Baronibus & Proceribus regni, of divers Customes and Rites of Government for decision of no small controversies between the King, guarded with stout Maintainers of his Crown, and the Prelates, who in their ambitious aims laboured for exemption of their Persons, habits and poniellions, from secular Jurisdiction.

I. *De advocatione & presentatione Ecclesiarum; si controversia emerget inter Laicos, vel inter Laicos & Clericos, vel inter Clericos, in Curia D. R. tractetur & terminetur.*

II. *Ecclesia de feudo D. Regis non possunt imperpetuum dari absque assensu & concessione ipsius.*

III. *Clerici rectati & accusati de quâcunque re, summoniti à Justitiâ Regis, venient in Curiam ipsius responsuri ibidem de hoc, unde videbitur Curia Regis quod ibi sit respondendum, & in Curia Ecclesie, unde videbitur quod ibi sit respondendum, ita quod Justitia Regis mittet in Curiam S. E. ad videndum quâ ratione ibi res tractabitur.*

IV. *Si Clericus convictus vel confessus fuerit, non debet eum de cetero Ecclesia tueri.*

v. in Johan.
art. 15.

V. *Archiepiscopis, Episcopis & personis regni non licet exire regnum absque licentia D. Regis: & si exierit (here is the true root of the old restraint from passing the Seas without Licence) si Regi placuerit, assecurabunt eum quod nec in eundo nec in redeundo, vel moram faciendo, perquirant malum sive damnum D. Regi.*

VI. *Excommunicati non debent dare vadum ad remanentiam, nec prestare Juramentum, sed tantum vadum & plegium standi judicio Ecclesie, ut absolvantur.*

VII. *Laici non debent accusari nisi per certos & legales accusatores & testes in praesentiâ Archiepiscopi, vel Episcopi; ita quod Archidiaconus non perdat jus suum nec quicquam quod inde habere debeat.*

VIII. *Si tales fuerint qui culpantur quod non velit vel non audeat aliquis eos accusare, Vicecomes requisitus ab eo faciat jurare XII. legales homines*

Guil. de novo
burgo lib. 1.
rer. Anglie.
cap. 22.

Matth. Paris
fol. 134.

mines de vicineto, seu de villâ coram Episcopo, quod inde veritatem secundum conscientiam suam manifestabunt.

X. Nullus qui de Rege tenet in Capite nec aliquis dominicorum ministrorum, sub interdicto (that is a censure Ecclesiastical, whereby the Administration of Sacraments is prohibited in some particular place, or among some certain Persons) ponatur; nisi prius Dominus Rex, si in terrâ fuerit, conveniatur, vel Justitia ejus, si fuerit extra regnum: & rectum de ipso faciat, & ita ut quod pertinebit ad regiam Curiam, ibidem terminetur, & de eo quod spectabit ad Ecclesiastitam Curiam, ad eandem mittatur, ut ibidem tractetur.

X. De appellationibus, sicuti emerserint, ab Archidiacono debent ad Episcopum, & ab Episcopo ad Archiepiscopum, & si Archiepiscopus defuerit in justitiâ exhibenda, ad D. Regem pervenientum est postremo, ut præcepto ipsius in Curiâ Archiepiscopi terminetur controversia: Ita quod non debet ulterius procedere absque assensu D. Regis.

Vide vero
Rogerum
Hovedenum
pag. 302.

XI. Si Calumnia emerserit inter Clericum & Laicum, vel inter Laicum & Clericum, de ullo tenemento quod Clericus velit ad eleemosynam trahere, latus verò ad laicum feudum, recognitione XII. legalium hominum per Capitalis Justitiae Regis considerationem terminabitur, utrum tenementum sit pertinens ad Eleemosynam sive ad feudum laicum, coram ipsa Justitia Regis; Et si recognitum fuerit ad Eleemosynam pertinere, placitum erit in Curiâ Ecclesiasticâ; si vero ad laicum feudum, nisi ambo tenementum de eodem Episcopo vel Barone advocaverint, erit placitum in Curiâ regiâ; sed si uterque advocaverit de feudo illo eundem Episcopum vel Baronem, erit placitum in Curiâ ipsius, itâ quod propter factam recognitionem seismam non amittat qui prius seistus fuerat, donec per placitum disputationum sit.

XII. Qui de Civitate vel castello vel Burgo vel Dominico Manerio D. Regis fuerit, si ab Archidiacono vel Episcopo super aliquo delicto citatus fuerit, unde debeat eis respondere, & ad citationes eorum satisfacere noluerit, bene liceat eum sub interdicto ponere; sed non debet excommunicari, priusquam Capitalis Justitia D. Regis villa illius conveniatur, ut justiciet eum ad satisfactionem venire; Et si Justitia R. inde defecerit, ipse erit in misericordiâ D. R. & exinde poterit Episcopus eum accusatum Ecclesiasticâ justitiâ coercere.

XIII. Archiepiscopi, Episcopi, & universæ personæ regni qui de rege tenent in Capite, & habent possessiones suas de D. Rege, sicut Baroniam, & inde respondent Justiciis & Ministris Regis, & faciunt omnes rectitudines & consuetudines regias, sicut Barones ceteri, debent interesse judiciis Curiæ D. Regis cum Baronibus suis, usque perveniantur ad diminutionem membrorum vel ad mortem.

XIV. Cum vacaverit Archiepiscopatus vel Episcopatus vel Abbatia; vel Prioratus de Dominio Regis, debet esse in manu ipsius, & inde percipiet omnes redditus & exitus, sicut dominicos; Et cum ventum fuerit ad consulendum Ecclesiæ, debet D. Rex mandare potiores personas Ecclesiæ; & in capellâ ipsius Regis debet fieri electio, assensu D. Regis, & consilio personarum regni quas ad hoc faciendum vocaverit, & ibidem faciet electus homagium & fidelitatem D. Regi, sicut ligio Domino, de vitâ suâ, & membris, & de honore suo terreno, salvo ordine suo, priusquam sit consecratus.

XV. Si quisquam de proceribus deforciaverit Archiepiscopo, Episcopo vel Archidiacono, de se vel de suis Justitiâ exhibere, Rex debet justitare.

XVI. Si forte aliquis deforciaverit D. Regi rectitudinem suam, Archibiscopus, Episcopus, & Archidiaconus debent eum justitiare, ut Regi satisfaciat.

XVII. Catalla eorum qui sunt in Regis forisfacto, non detinet Ecclesia, vel cameterium contra justitiam Regis, quia ipsius Regis sunt, sive in Ecclesiis, sive extra fuerint inventa.

XVIII. Placita de debitibus quae fide interposita debentur, vel absque interpositione fidei, sint in Curia Regis.

XIX. Filii Rusticorum non debent ordinari absque assensu Domini, de cuius terrâ nati dignoscuntur.

Different in particulars of no slight moment are the reported Clarendon Constitutions in the greater History of Matthew Paris, first published (as I think) by that Reverend Father Matthew Parker, Archbishop of Canterbury, whose Archetype, as it was transcribed by a Country Vicar, and delivered to the Printer's hands (I have part of that Transcript to witness it, in mine own hands) is but equal in every iota to the published Copy: But as they are here written I have seen them added, without discrepancy of a syllable, at the end of the Life and Death of St. Thomas of Canterbury, drawn in ancient hand, and out of a quaternary of former Authors, Herbert of Doseham, William a Monk of Canterbury, John of Salisbry and Alan Abbot of Tenkesbury, into a just Volume collected: *Huic libello nostro* (faith the Author, that you may know what work they make here) *inserere studuimus funestam illud & famosum Decreti Chirographum, consuetudines (viz.) illas regias apud Clarendonam promulgatas, quas ideo hic interseruimus, ut legant scula post futura, & hinc cognoscant quam justa, quam perspicua fuerit gloriosi Neomartyris Thomae, primò Exilio & post Martyrii causa.* What contention (after confirmation by Oath of the whole Baronage) grew hereupon twixt the King and that Canonized Arch-Bishop, is in every Chronologer of those times enough declared. But it cannot be ungratefully received, if both for respect to an old English endeavouring Wit, and also for matter, form and phrase of relation, out of Robert of Gloucester, be made this superaddition.

Robert Glo-
cest. hist. Poet.

No man ne might thenche the love that there was
 Bitwene the K. h. and the gode man S. Thomas;
 The diuel had enui thereto, and set bitwen them feu,
 Alas, alas thulke stond, vox all to well it greu.
 Vox there had ere ibe kings of Luther dede
 As W. Bastard, and his son W. the rede.
 That Luther Laws made inou, and held in al the lond
 The K. wold not beleue the lawes that he sond,
 Ne that his elderne bulde, ne the godeman S. Thomas
 Thought that thing age right neuuer law uas.
 Ne sothnes and custom mid strength up ihold,
 And he wist that bre dere Lourd in the Gospel told
 That he himselfe was sothnes, and custum nought,
 Theruoye Luther custumes he woulde graent nought.
 Ne the K. woulde beleue that is elderne ad ihold,
 So that conteke sprung bituene them manifold.
 The K. droou to right law mani Luther custume,
 S. Thomas thom withsed, and granted some.

The

The Lawes that icholle now tell he granted baue.
 Yuf a yuman hath a sone to clergi idiau
 He ne fall without is lourdes icrouned nougnt be,
 Uo yuman ne mai nougnt be made agen is lourds will free.

In the eighteenth of *Clarendon Customs* is the substance of this particular; where *Rusticorum* interpreted Yumen in this Poet, is mentioned: To both, as a Synonymy, is *homines* used as well in the Law-Annals of later times, and in Writs of *Ven. fac. xii tam milites quam alios liberos & legales homines de vicineto, &c.* as in older Constitutions before expressed. *gen. e.* is the common allowed *Saxon* root, whence our now usual name of Yeoman had his beginning: but my conceit with a painted imposture deceives me, if the ancient *Latin* be not Father of both, but in a Dialect different. Nor let it be a fault *ad Appios & Coruncas redire*, some taste in Yeomen is of *Homines*, but more of *Hemones*, which in *Ennius* and *Festus*, is not otherwise significant, than *Themen* in *Engliss*, altered only in Character in *gemen* the *Saxon* word. But to my Law-rhythms again;

Reg. Indic.
fol. 7.

Fest. in verb.
Hemones.
Paul. Merul.
ad lib. 1.
anoal. Ennius;

Another thing he granted eke as ye mow nouise;
 Yuf a man of holi Chirch hath eni lay fee,
 Parson, other what he be, he ssal do thereboze
 Kings service that there ualh, that is right ne he dorloze,
 In plaiding and in assise be and in judgement also.
 Wote war man ssal be blemmed, other to deth ido.
 He granted eke yuf eni man the Kings traitor were,
 And eni man is chateux to holi chirch here
 That holi chirch ne solde nougnt the chateux there let
 That the R. there other is as is owne is ne wette.
 Uo all that the felon hath the Kings it is
 And eche man mai in holi church is owne take iwis.
 He granted eke that a chirche of the Kings fe
 In none stede ene and ever ne ssold fgiue be
 As to hous of religion, without the Kings lebe,
 And that he other the patron the gift first gave.
 S. Thomas granted well these and other mo,
 And these other he withsede that did him well woe.

I. Yuf bituene twei leud men were eni striving,
 Other bituene a leud and a cleric, for holi chirch thing,
 As dor doulon of chirch whether shold the chirch give,
 The R. wold that in his court the ple ssold be d*z*iue;
 Uo as much as a leud man that the o parti was
 Chanliche was under the R. & under no bishop nas.

What he styles *Lewedmen*, is by our common phrase Lay-men, *Leudes* in the old *Teutonique* and *Saxon* (as *λευτός* in Greek from *λευτός*, i.e. a Stone, referred, as *Pindar* hath it, to that mythick instauratiōn of hard mankind by *Deucalion* and *Pyrrha*) is equivalent to the *Multitude* or *common people*, in the present *Engliss*.

Pind. Olymp.
9.
Lipsius lib. 5,
Poliorceticon

Chaucer in Prologue, and in the
Sommers tale.

For yea a Priest be soule, on whome we trust,
No wonder is a leude man to rust.

But then the ignorant are by it noted, rather than who are not Clerks ;
For the same Jeoffrey in another place faith,

This every leud Vicar and Parson can say.

Robert of Gloucester speaks again :

II. Another was no bishop, ne cleric nathe mo,
He solde without Kings leue out of this lond go.
And than hii solde suere up the boke ywis.
That hii ne sold purchas no ubel the R. ne none of is.

III. The thrid was yef eni man in mausing were ibrought,
And such come to amendment, ne age were nougat,
That he ne swoze up the hoc, ac bozowes find solde
To stand to that holy Chirch there of him toky wold.

IV. The verth was that no man that of the R. huld ought
In cheise or in eni servise in mausing were ibrought,
Vote the wardeins of holy chirch that brought him thereto,
The R. sede or is bailifys wat he ad misdo,
And loked verst were thei to amendment it bring,
And vote hii wolde by their leue do the mausing.

V. The vist was, that Bishopzykes and Abbeis also
That vacans were of prelas in the R. hand were ido,
And that the R. sold all the land as is owne take,
Woxt at last that him lust eni prelat there make.
And than thulke prelat sould in is chapel ichose be.
Of is clerks which he wuld to such prelate vise.
And than wan he were ichose in is chapel right there,
Homage he solde him do ar he confirmed were.

VI. The sixt was yef eni play to chapitle were idraw,
And eni man made is appele, yef me dude him unlaw,
That to the Bishop from Ercedeken is appele sold make,
And from Bishop to Arcebissop and luth none other take,
And but the Ercebissops court to right him wold bring,
That he sold from him be cluthe bivoze the King.
And from the R. non other mo so that attan end
Plaining of holi chirch to the R. shold wend.
And the R. amend solde the Ercebissops dede,
And be as in the Popes stede, and S. Thomas it withsede.

VII. The seuenthe was that plaiding that of det were
To yeld wel thorou truth iplight, and nougat ihold nere
Alhei thorou truth it were, that ple sold be ibrought
Bivoze the R. and is bailies and to holi chirch nougat.

VIII. The

VIII. The eighth was that in the lond citation none nere
Thoru bull of the Pope of Rome, and clene biseued were.

IX. The nithe was that Peters pence that me gadereth manion
The Pope nere nought on isend, ac the R. echone.

X. The tethe was yuf eni Clarke as felon were itake,
And vox felon ipsoved and ne might it not forslake,
That me sold him verst disordein and luth thoru there law,
And thoru judgement of the land hong him other to draw,
Vor these and vox other mo the Godeman S. Thomas
Fleu verst out of Englond and eke imarred was,
Vor he sei there uas vote o way, other he must stiffe be,
Other holy chirch was isent, that of right was sofre.

Absolution of the Prelates Oath, which among others confirmed what he soon made retraction of, was obtained from *Alexander the Third, Bishop of Rome*; who gave an insolent repulse to the Kings Ambassadors, sent for his ratification of that which the Baronage had thus concluded. The King herewith exceedingly provoked, made present dispatch of Letters to every Sheriff in the Kingdom, thus pronouncing;

XI X. *Præcipio tibi, quod si aliquis Clericus, vel Laicus in ballivâ tuâ, Romanam Curiam appellaverit, eum capias & firmiter teneas, donec voluntatem meam præcipiam; & omnes redditus Clericorum Archiepiscopi, & possessiones scilicet in manum meam, & omnium Clericorum qui cum Archiepiscopo sunt, patres, matres, fratres, sorores, Nepotes, & Neptes pones per salvos plegios, & catalla eorum, donec voluntatem meam inde præcipiam.* Et hoc breve tecum afferas cum summonitus fueris.

Math. Paris:
Pag. 137.

X X. *Si quis inventus fuerit ferens literas D. Papæ* (this is spoken of before in my Poet) *vel mandatum, aut Thome Archiepiscopi, continens interdictum Christianitatis in Angliâ, capiatur & retineatur, donec inde voluntatem meam præcipiam.* But in the Annals of *Roger of Hoveden, Dedo sicut de Regis traditore & regni, sine dilatione justitia fiat.*

Roger de Ho-
ved. annal. 2.
fo. 284.

X X I. Promulgation also, by way of prohibition, was made of most of the former diminutions of Papal or Episcopal authority: The Clergy-men, that were beyond Sea, under forfeiture of their Livings, were charged, by Summons in their places of due residence, to return.

X X II. *Londoniensis & Norwicensis Episcopi summoneantur, & sint coram Justitiariis Regis ad rectum faciendum, quod contra Statuta regni interdi- xerunt terram Comitis Hugonis, & in ipsum sententiam anathematis in- tulerunt.*

Math. Paris.

X X III. *Denarii S. Petri colligantur & custodiantur.*

X X IV. In the 22th of his Reign at Nottingham, celebravit (saith *Hoveden*) magnum Concilium de Statutis regni sui, & coram Rege filio suo, & coram Archiepiscopis, Episcopis, Comitibus & Baronibus regni sui communi omnium consilio divisit regnum suum in VI. partes, per quarum singulæ tres Justiciarios Itinerantes constituit; Here was the infancy of that form of Circuits by Justices in Eyre, whose names and described limits my Author in a Sexpartite division hath remembred. *Et postea* (you hear him again) *fecit D. Rex omnes predictos Justiciarios jurare super Sacrosancta Evangelia, quod ipsi bona fide & sine malo ingenio, has*

Hoveden
part. 2. p. 313.

E

Subscriptas

Quadriparti-
tam etiam
regni ad hunc
modum sub
codem prin-
cipe habes
divisionem
apud eu-
dem, fo. 337.

subscriptas assisas custodirent, & inviolabiliter ab hominibus regni facerent custodiri; The subscribed Articles with this Title thus he hath Recorded :

Affise Henrici Regis factae apud Clarendon & renovatae apud Northamtune.

V. Camden in Ord. Angl.
pag. 123. qui-
cum conferas
Feud lib. 2.
tit 10. & 21.
quin & Mal-
mech. hist.
Nov. lib. 2. fol.
103. l. 25. so-
lidatus, &c.
Reg. Brev.
Judic. fo. 1.
in Hab. fac-
vis.

XXV. *S*i quis rectatus fuerit coram Justitiis D. Regis de murdro, vel latrocinio, vel roberia, vel receptione hominum tale facientium, vel de falsoneria, vel iniquâ combustione, per Sacramentum XII. militum de Hundredo, & si milites non adfuerint (I here understand by Milites no other than such as were *fenditorii*, or held of some Superior by Knight's service, thereby distinguished from *milites solidarii* or *Servientes*, i. e. hired Soldiers, and both from the name of dignity used in ceremonious Chivalry far separated) per Sacramentum XII. liberorum & legalium hominum, & per Sacramentum IV. hominum de unaquaque villa Hundredi, eat ad Judicium Aquæ (i. e. to the watry Ordeal, described with the fiery in Lambard's exposition of words before his Saxon Laws, and in the Antiquities of the Church of Britany, published, as I suppose, by Matthew Parker Archbishop of Canterbury) & si perierit, alterum pedem amittat; And apud NORTHAMPTUNE additum est pro rigore Justitie, quod dexterum similiter pugnum cum pede amittat, & regnum abjuret & infra XL. dies à regno exulet; Et si ad aquam mundus fuerit, inveniat plegios, & remaneat in regno, nisi rectatus fuerit de murdro vel aliquâ turpi feloniam per commune Comitatus & legalium militum patriæ: de quo, si prædicto modo rectatus fuerit, quamvis ad aquam mundus fuerit, nihilominus infra XL. dies à regno exeat, & catalla sua secum asportet, salvo jure Dominorum suorum, & regnum abjuret in misericordia D. Regis.

XXVI. Nulli liceat, neque in burgo, neque in villa, hospitari aliquem extraneum ultra unam noctem in domo sua, quem ad rectum habere noluerit, nisi hospitatus ille effonium rationabile habuerit, quod hospes domus monstret vicinis suis, & cum recesserit, coram vicinis recedat & per Diem.

XXVII. Si quis seisisus fuerit de murdro, vel de latrocinio, vel roberia, vel falsoneria, & inde sit cognoscens, vel de aliqua alia feloniam, quam fecerit, coram præposito Hundredi, vel Burgi, & coram legalibus hominibus, id postea coram Justitiis negare non poterit. Et si idem sine seisisina coram eis aliquid hujusmodi recognoverit, hoc simul coram Justitiis negare non poterit.

XXVIII. Si quis obierit Francus tenens, heredes ipsius remaneant in tali seisisina, qualem pater suus habuit die qua fuit vivus & mortuus, de Feodo suo, & catalla sua habeant unde faciant divisam defuncti, & dominum suum postea requirant, & ei faciant de relevio & aliis, que eis facere debent de feodo suo.

XXIX. Si heres fuerit infra etatem, Dominus feodi recipiat Homagium suum, & habeat in custodia illum quatinus debuerit; alii Domini, si plures fuerint, homagium ejus recipient, & ipse faciat eis quod facere debuerit.

XXX. Uxor

XXX. *Uxor defuncti habeat dotem suam, & partem de catallis ejus que eam contingit*, which by the Law in those days was a third part, if the dead had left issue, but a moiety, if he were *de visu*.

XXXI. *Si Dominus feodi negat heredibus defuncti seisinam ejusdem feodi quam exigunt, Justitiarii D. Regis faciant inde fieri recognitionem per XII. legales homines, qualem seisinam defunctus inde habuit die quo fuit vivus & mortuus*; This is the very Mortdancer; *Et sicut recognitum fuerit, ita heredibus ejus restituant; & si quis contra hoc fecerit & inde attaintus fuerit, remaneat in misericordia Regis.*

XXXII. *Justitiae Domini Regis faciant fieri recognitionem de disseisis factis super assissim, à tempore quo D. Rex venit in Angliam proximo post pacem factam inter ipsum & Regem filium suum.*

XXXIII. *Justitiae capiant fidelitates D. Regis infra Claus. Pasch. & ad ultimum infra Claus. Pentecost. ab omnibus videlicet Comitibus, Baronibus, Militibus & liberè tenentibus, & etiam rusticis qui in regno manere voluerint; & qui facere voluerit fidelitatem, tanquam inimicus D. Regis capiatur.*

XXXIV. *Habent etiam Justitiae precipere quod omnes illi qui nondum fecerunt homagium & ligeantiam D. Regi, quod ad diem, quem eis nominabunt, veniant & faciant Regi Homagium, & ligeantiam, sicut ligeo Domino.*

XXXV. *Justitiae faciant omnes Justicias & rectitudines spectantes ad D. Regem, & ad coronam suam, per breve Domini Regis, vel illorum qui in loco ejus erunt, de feodo dimidii milit. & infra* (If the account of a Knights fee be by the annual value, then confidently according to the quadruple proportion of the known Relief, you may affirm it, by *xx l.* Lands; and so likewise by comparison with Soccage payment upon the Stat. of West. i. for aid, A fair Fitz chivalier, or a File marryer; but by a calculation prefixed to the red Book of the Exchequer, DCLXXX. Acres make exactly the Summe) *nisi tam grandis sit querela, quod non possit deduci sine D. Rege, vel talis quam Justitiae ei reponent pro dubitatione suâ, vel ad illos qui in loco ejus erunt; intendant tamen pro posse suo ad commodum D. Regis facendum.*

XXXVI. *Faciant assissam de latronibus iniquis, & malefactoribus terra que affisa est, per concilium Regis, filii sui, & hominum suorum; per quos ituri sunt Comitatus.*

XXXVII. *Justitiae provideant quod castella diruta prorsus diruantur, & diruenda bene prosternantur; Et nisi hoc fecerint, D. Rex Judicium Curie sue de eis habere voluerit, sicut de contemptoribus precepti sui.*

XXXVIII. *Justitiae inquirant de Escaetis, de Ecclesiis, de terris, de feminis que sunt de donatione D. Regis.*

XXXIX. *Ballivi D. Regis respondeant ad Scaccarium, tam de assiso redditu, quam de omnibus perquisitionibus suis, quas faciunt in balliviis suis, exceptis illis qua pertinent ad vicecomitatum.*

XL. *Justitiae inquirant de custodiis castellorum, & qui, & quantum, & ubi eas debeant, & postea mandent D. Regi.*

XLI. *Latro, ex quo capitur, Vicecomiti tradatur ad custodiendum, & si Vicecomes absens fuerit, ducatur ad proximum Castellanum, & ipse illum custodiat donec illum liberet Vicecomiti.*

XLII. *Justitiae faciant querere per consuetudinem terra, illos qui à regno recesserunt, & nisi redire voluerint infra terminum nominatum, &*

Ranulph de
Glany. lib. 7.
ca. 5. Bract.
lib. 2. de acq.
ter. dom. cap.
25. sect. 2.

V. Camden in
Ordin. Angl.
Casum item
Nevillæ in
libr. 7. Relat.
D. E. Coke
huc refer.

stare ad rectum in Curiâ Regis, postea ut lagentur, & nomina ut lagorum afferantur ad Pascha, & ad Fest. S. Mich. ad Scaccarium, & exinde mittantur D. Regi.

While thus the King made provident Order for Lay-busines, *Hugo à Petra Leonis*, the Pope's Legate in *England*, laboured for dilatation of Church; to whom was granted by the King:

Matth. Paris
pag. 177.

XLIII. *Quod de cetero Clericus (Matthew Paris his report) non trahatur ante Judicem secularem personaliter, pro aliquo crimine vel transgressione, nisi pro forestâ & laico feudo, unde Regi vel alii D. Seculari laicum debetur servitium.*

XLIV. *Ut Archiepiscopatus, Episcopatus, vel Abbatiæ, non teneantur in manu Regis ultra annum, nisi pro causa evidente, vel necessitate urgente.*

XLV. *Ut interfœtores Clericorum convicti vel confessi, coram Justicio regni, presente Episcopo puniantur.*

Rog. de Ho-
ved. part. 2.
t. 446.

XLVI. *Quod Clerici duellum facere non cogantur.*
XLVII. *Statuit apud WOODSTOCK, quod quicunque forisfecerit ei de forestâ suâ, semel de venatione suâ, de ipso salvi plegii capiantur; & si iterum forisfecerit, similiter capiantur de ipso salvi plegii; si autem tertio idem forisfecerit, nulli plegii capiantur, sed proprium corpus forisfactoris: which concludes what of his Laws common Histories afford.*

C H A P.

C H A P. I X.

Richard Ceur de Lion.

THIS Henry's Successor was the stout *Richard Ceur de Lion*: Himself in Person attending the Eastern Wars. Division by his Commission was made for maintaining the Laws and Customes of the Kingdom, of the whole Government, twixt *Hugh of Pusar*, Bishop of *Durham*, and *William* Bishop of *Ely*, Lord Chancellor. The stream of all, howsoever there was an association of *Hugh Bardulph* and *William Brivere*, was carried as the Prelates pleased, until their ambitious insolency made a period to their too great authority. After his return Justices in Eyre were sent into every County, & secundum subscriptorum formam capitulorum (faith *Hoveden*) proceſſerunt in justiciis exequendis.

Roger de
Hoveden, par.
2. fo. 422.

Forma Procedendi in Placitis Coronæ Regis.

I. **N**primis eligendi sunt IV. milites de toto Comitatu; qui per Sacramentum suum eligant II. legales milites de quolibet hundredo, vel Wapentacco. Et illi II. eligant super sacramentum suum X. milites de singulis Hundredis, vel Wapentaccis; vel si milites defuerint, legales & liberos homines, ita quod illi XII. insimul respondeant de omnibus capitulis de toto Hundredo vel Wapentacco.

Capitula Placitorum Coronæ Regis.

II. **D**e placitis Coronæ novis & veteribus, & omnibus que nondum sint finita, coram Justiciariis D. Regis:

III. Item de omnibus recognitionibus & omnibus placitis, que summonita sunt coram Justiciariis per breve Regis, vel capitalis Justitiae, vel à capitali Curiâ Regis coram eis missa.

IV. Item de Escaëtis, que sunt & que fuerunt postquam Rex arripuit iter versus terram Jerusalem, & que fuerunt tunc in manu Regis, & sunt modò in manu ejus, vel non; & de omnibus Escaëtis Domini Regis, si à manu sua sint remote, quomodo, & per quem, & in cuius manus devenerunt, & qualiter & qui exitus inde habuerit, & quos, & quid valuerint, & quid modo valeant, & si aliqua eschaëta sit, que ad D. R. pertineat, que in manu ejus non sit.

V. Item de Ecclesiis que sunt de Donatione D. Regis.

VI. Item de custodiis puerorum que ad D. Regem pertinent.

VII. Item de malefactoribus & eorum receptoribus & eis consentientibus.

VIII. Item de maritagiis puellarum vel viduarum, que ad D. Regem pertinent.

IX. Item de falsonariis.

X. Item de Interfectoribus Judeorum, qui sint, & qui vadii Judeorum inter-

intersectorum, & catallis, & terris, & debitis, & chartis, & quis ea habuerit, & quantum eis debuerit, & que vadia habuerint, & quis ea teneat, & quantum valeant, & quis exitus inde habuerit, & quos: & omnia i adia & debita Iudeorum intersectorum capiantur in manum Reg. & qui ad occasionem Iudeorum fuerunt, & non fecerunt finem cum D. R. vel Justitiariis suis, capiantur, & non deliberentur nisi per D. R. vel Justitiarios suos.

XI. Item de omnibus auxiliis datis ad redemptionem Domini Regis (which were for his ransome out of the hands of the Emperour Henry..... to whom Limpold Duke of Austria, who took him Prisoner, had sold him and amounted to CXL. Marks of Silver) *quis quantum promiserit, & quantum reddiderit, & quantum aretro sit.*

XII. Item de Fautoribus Comitis Johannis (it was his Brother who affected the English Diadem, in the time of Richard's Captivity) *qui finem fecerunt cum D. Rege & qui non.*

XIII. Item de Catallis Comitis Johannis, vel fautorum ejus, que ad usum D. Regis non sunt conversa, & quantum Vicecomites receperunt, vel ballivi sui, & quis aliquid contra antiquas consuetudines regni derit.

XIV. Item de omnibus terris Comitis Johannis, de Dominicis & Wardis, & Escaetis, & de donis suis; & quâ de causâ data sunt ei illa dona, & omnia dona Comitis Johannis capiantur in manum Regis, praterquam illa que per Regem confirmata sunt.

XV. Item de debitis & finibus que debentur Comiti Johanni & quâ de causâ, & omnia exigantur ad opus D. Regis.

XVI. Item de faneroribus & eorum catallis, qui mortui sunt. For by an old Law of the Confessor, Usury under pain of loss of the Offender's substance, is forbidden.

XVII. Item, de vinis venditis contrâ assisam, & de falsis mensuris, tam vini quam aliarum rerum.

XVIII. Item de cruciatis mortuis ante iter suum arreptum versus Jerusalem, & quis eorum catalla habuerit, & que, & quanta.

XIX. Item de magnis assis, que sunt de centum solidatis terra, & infra.

XX. Item de defaltis.

XXI. Preterea in quolibet Comitatu elegantur 4. Milites, & unus Clericus, Custodes placitorum Coronæ, & nullus Vicecomes sit Justitiarius in vicecomitatu suo, nec in Comitatu, quem tenuerit post primam Coronationem D. Regis.

Annexed is to all these an intricate kind of Inquisition, appropriated to that time, of the Kings profits in Wards, and Escaets, with Farms, and other Country-Commodities, which would receive larger place here, than the inconveniency demands.

XXII. Omnia debita & vadia Iudeorum imbreventur, terræ, domus, redditus & possessiones. Judeus vero, qui aliquid horum celaverit, sit inforsifaturâ D. Regis de corpore suo, & concelamento, & de omnibus possessionibus suis, & omnibus catallis suis, nec unquam concelamentum Iudeo recuperare licebit: With particular form of Place and Persons, where, and before whom this imposition might be performed.

XXIII. For especial exercise in Chivalry, that practise might breed skill, and both alacrity to Arms, he instituted by grant, Tournaments, but not without certain restraints; as by his Charter thereof

Vide Guil. de
novo Burgo
Rer. Angl.
lib 3 cap. 22.

Guil. Neubrig.
lib. 5. cap. 4.
Matth. Paris
237. post
Hovedenum
pag. 424.

thereof made to Hubert Archbishop of Canterbury, and reported in the red Book of the Exchequer, is thus apparent; *Sciatis nos concessisse, quod Torneamenta sint in Anglia, in quinque plateis inter Sarum & Wilton, inter Warwick & Kelingworth, inter Stamford & Walingford, inter Brakeley & Mixeber, inter Bly & Tikehill: Ita quod pax terre mee non infringatur, nec de forestis nostris damnum inferatur. Et Comes, qui ibi torniare voluerit, dabit nobis XX. Marcas (understand it of Silver) & Baro X. Marcas; & Miles, qui terram habuerit, IV. Marcas, & qui non habuerit, II. Marcas. Nullus autem extraneus ibi torniabit; unde vobis mandamus quod ad diem Torneamenti habeatis ibi II. Clericos, & II. Milites vestros, ad capiendum sacramentum de Comite & Barone, quod vobis de predicta pecunia ante Torneamentum satisfacient; & quod nullum torniare permittant, antequam super hoc satisfecerit; Et X. Marcas pro carta ad opus nostrum capiatis, unde Comes Sarum & Comes de Clara & Comes de Warrena plegii sunt. Teste meipso apud villam Episcopi, xxii. die Augusti. First use of these Torneaments was (as William of Newborough delivereth) in the time of Stephen, prohibited under Henry Fitz-L'Empres, and by this Lyon-hearted Prince, to Martial Honor, restored.*

XXIV. *Præcepit, quod omnes, qui chartas habebant, venirent ad novum sigillum suum* (this new Seal was, after the old lost, with one Rozer, the King's Vice-Chancellor, drowned in the Cyprian Sea) *ad chartas suas rēnovandas.*

Lib. Rub.
Scacc.

Roger de
Hoveden,
pag. 424,
& 440.

XXV. *Constitutum est, quod omnes mensura totius Angliae sint ejusdem quantitatis, tam de bladis, quam de leguminibus & de rebus consimilibus; scilicet una bona summa equi: & hæc mensura sit rata, tam in Civitatibus & Burgis quam extra; Mensura etiam vini & Cerevisie, & cunctorum liquorum, sit ejusdem quantitatis, secundum diversitatem liquorum; Pondera etiam & libræ, & ceteræ Pesiæ, sint ejusdem quantitatis in toto regno, secundum diversitatem mercaturarum.*

XXVI. *Mensuris Bladorum & liquorum, vini & Cerevisie, inclaventur claves, ne per dolum possint falsari.*

XXVII. *Lanci Panni, ubicunque fiunt, siant de eadem latitudine, scilicet de duabus ulnis infra lisuras, & ejusdem bonitatis in medio & in lateribus.*

XXVIII. *Eadem ulna sit in toto regno, & ejusdem quantitatis, & ulna sit ferrea.*

XXIX. *Ne quis Mercator pratendat Seldæ sue rubros pannos, vel nigros, vel scuta, vel aliqua alia, per que visus emporum sepe decipiuntur, ad bonum pannum eligendum.*

XXX. *Nulla tintura vendenda, nisi solummodo nigra, nec fiat (so I distinguish the words) alicubi in regno, nisi in capitalibus civitatibus, aut Burgis IV. aut VI. legales homines de ipsâ villâ secundum quantitatem ville; similiter, in vicecomitatu; aut cum prepositis Civitatis aut Burgi, si in manu Vicecomitis non fuerint, assignentur ad assidam custodiendam; scilicet sub hæc formâ, ut ipsi videant & certi sint quod omnia vendantur, & emantur per eandem mensuram, & omnes mensuræ sint ejusdem quantitatis, secundum diversitatem mercium.*

XXXII. *The punishment of the offenders, was corpora eorum capiantur, in carcerem detrudantur, & omnia que ipsius sunt, ad fisci communum, seellantur.*

Matth. Paris,
pag. 257.

XXXIII. *If the instituted Comptrollers fail in that trust committed to them, de catallis suis in misericordia Regis remaneant.*

XXXIV. An

Hoveden part
2. f. 443.

Tempore E. I.
tit. Aowry
103. & Reg.
orig. fo. 9. 2.

10. 11. 5. Aowry.
ry 267. 11. li.
4. fo. 31. b.

XXXIV. An Aid of 5*s.* the *hide*, was taken through the Kingdom: for collection were Commissions granted, and power of convening the Land tenants, and charging them by Oath to make true report of Hides in every Mannor; *Ad pœnam verò Juratorum, qui aliquid contra Juramentum suum celaverint in hoc negotio, statutum erat, quod quiunque Rusticus convictus fuisset de perjurio, daret domino meliorem bovem de carucâ suâ, & insuper responderet de proprio ad opus D. Regis, tantum pecunie, quantum fuisset declaratum per suam perjuriam fuisse celatum.* Si verò liber homo (by the opposite of the title (*Rusticus*) I conceive generally Tenants in ancient demesne, which are not allowed the addition of Freeman, and Copyholders) *convictus fuisset, esset in misericordia Regis, & insuper refunderet de proprio, ad opus D. Regis, quantum fuerit per eum celatum, sicut & Rusticus.*

XXXV. Statutum fuit, quod quilibet Baro cum Vicecomite faceret districciones super homines suos, & si per defectum Baronum, districciones factæ non fuissent, caperetur de dominico Baronum quod super homines suos restaret reddendum, & ipsi Barones ad homines suos inde caperent: & libera feoda Ecclesiarum parochialium de hoc Tallagio excipiebantur, & omnes excaet. Baronum quæ fuerunt in manu Domini Regis, communicaverunt.

XXXVI. Sergasteria D. Regis, quæ non erant de feodis militum, excipiebantur: Take it of Graund or petit Serjeanty, and it fully accords with some Term Books, of later times allowed, and published.

Capitula Placitorum Coronæ D. Regis,

Hoveden part
2. fo. 445.

WHereof Hugh Bardulph, Roger Arundel, and Geffrey Harfet, Justices in Eire through the Northern parts, held Plea.

XXXVII. De omnibus assisis, & de magnis assisis, usque ad X. libras terræ, & infra.

XXXVIII. De Advocacionibus Ecclesiarum, & capiantur coram eis electiones magne assise per mandatum D. Regis, vel ejus capitalis Justitia.

XXXIX. De Ecclesiis vacantibus vel non vacantibus, quæ fuerunt de donatione D. Regis.

XL. De Excaetis D. Regis.

XLI. De Donationibus & de valectis, & puellis, quæ sunt, vel esse debent, in donatione D. Regis, & de valentiis terrarum suarum, & si quis eorum vel earum sit maritus, & inquiratur cui, & per quem, & a quo tempore.

XLII. Quæ vidua non finierunt pro se maritandis, & finis capiatur ad opus D. Regis.

XLIII. De Serganteriis D. Regis, quis ea habet, & per quem, & quantum valent, & qui finem non fecerunt ad auxilium Domini Regis (look before in art. xxxvii.) & qui fecerunt, & finis capiatur.

XLIV. De usuris Christianorum, & eorum catallis, qui sunt mortui.

XLV. De illis, qui sunt in misericordia Regis, & non ameriati.

XLVI. De purpresturis D. Regis.

XLVII. De viis D. Regis estreiciatis.

XLVIII. De thesauris inventis.

XLIX. De malefactoribus & eorum receptoribus.

L. De fugitivis retatis, reversis post ultimam assissam.

LI. De

L.I. De omnibus ponderibus, & mensuris, & ulnis renovatis, & si IV. homines (refer hither the xxxii. Article) qui sunt attornati ad hæc custodienda in unaquaque villa, fecerint quod inde statutum est, & si attachaverint transgressores illius assisa, & si non attachiaverint, prout debent, puniantur sicut ipsi transgressores.

L.II. Totum vinum illius qui vendidit contra assisam, capietur ad opus D. Regis, & præterea Dominus vini & venditores, sint in misericordia Regis.

L.III. Of defaults in the Commissioners appointed for levying the aids.

L.IV. De Custodibus portuum maris, si quid receperunt quod non reddiderunt, & si mercedem aliquam receperunt pro jure Regis retinendo, & si quis aliquid receperit, qui non fuerit ad hoc attornatus.

The Justices of the Forest, *Hugh of Nevill* chief Justice, *Hugh Wac*, and *Ernise of Nevil* made their Circuits, authorised by the King's Commission; that in every County, where they were to pass, they should call before them *ad placita forestæ*, Archbishops, Bishops, Earls, Barons, all Free-holders, the chief of every Town, and IV. Yeomen *ad audienda præcepta Regis*.

Hec est assisa D. R. & hec sunt Præcepta de forestis suis in Anglia, facta per assensum & Consilium Archiepiscop. & Episc. & Abbat. Comit. & Bar. & Militum totius regni.

*L.V. T*HAT none should trust, in hope of easie composition for offences, touching Venison, or other matters of the Forest, but that Justice should be done to the Convict, *qualis facta fuit tempore Henr. avi patris D. Regis* (viz.) *ut amittant oculos & testiculos*.

L.VI. That none presume to keep Bowes, Arrowes, Grey-hounds, or other Dogs in the King's Forest, nisi habeant ipsum Regem ad Warrantum suum, vel aliquem alium, qui eum possit inde warrantizare.

L.VII. Quod nullus donet vel vendat aliquid ad destructionem bosci sui, vel ad wastum que sit infrà forestam Regis, sed concedit bene quod capiant de boscis suis quod necesse eis fuerit, sine waste, & hoc per visum forestarii sui & viridariorum suorum.

L.VIII. Quod omnes illi, qui boscos habent infrà metas forestæ D. Regis, ponant idoneos forestarios in boscis suis, de quibus forestariis ipsi, quorum bosci fuerint, sint plegii, vel tales inveniant plegios idoneos, qui possunt emendare, si forestarii in aliquo forisfecerint, quod D. Regi pertineat.

*L.IX. That the King's Foresters take special survey, lest other Mens Woods, *intrà metas forestæ*, be destroyed; & sciant benè illi, quorum bosci fuerint, quod de ipfismet, vel de eorum terris, capietur emendatio, & non de alio.*

L.X. Quod sui forestarii jurent, quod secundum omne posse suum, tenebunt ejus assisam, qualam eam fecit de forestis suis, & quod non vexabunt milites, neque probos homines, de hoc quod D. Rex iis concessit de boscis eorum.

LXI. That in every County, where he hath Venison, there be placed XII. milites, ad custodiendam venationem suam & viride in forestis suis, & quod IV. milites p̄mantur ad adgstantos boscos suos, & ad recipiendum

recipiendum pannagium suum, & custodiendum & defendendum.

LXII. *Quod nullus adgister boscos suos infra metas forestae* (I think you had need translate *metas* into *regard* oft-times among these Orders) *antequam bosci eorum adgistentur*; *Et est sciendum quod incipit adgistamentum D. Regis XV. Dies ante Festum S. Michaëlis, & durat XV. Dies post Festum S. Michaëlis.*

LXIII. *Si forestarius ejus habet in Custodiâ suâ dominicos boscos regis, & bosci illi destructi fuerunt, & non possit nec sciat justam causam monstrare, quare bosci destruantur, nihil aliud capiatur de forestario illo, nisi proprium corpus suum.*

LXIV. *If any Clergyman offend in the Forest, non dubitent Forestarii in eos manus imponere, ad eos resistendos & capiendos, ipse enim eos inde Warrantizabit.*

LXV. *That every three Years view be taken of all Assarts, as well new as old, and of all purprestures, and of all wafts of the woods, and that they be severally inrolled.*

LXVI. *That Archbishops, Bishops, Barons, Knights, Freeholders and all Yeomen of the Land, appear at the Summons Magistri Forestarii sui, ad placitanda placita de forestis suis.*

LXVII. *Ne aliqua Caretta exeat Chiminum in Forestâ Regis, neque porci sint in Forestâ Regis tempore de Foinesun, (it is now à fætatione, called the Fence, or rather the Fawnes Month) scilicet XV. Diebus antè nativitatem S. Joannis Baptiste, & XV. Diebus post idem Festum.*

LXVIII. Who so shall offend in taking the King's Venison, and be thereof attainted, shall have Judgment of loss of his Eyes and Genitals; *Qui autem forisfecerit in Forestâ Regis de viridi, sive per culturam, sive per esbrancaturam, sive per foditionem turvarum, sive per escoriationem more, sive per culpationem de Subvemore, sive per effartum, sive per novam purpresturam; per sepem, vel fossatam; vel per * remotionem molendini, vel cursus aqua, vel Bercaria; vel aliarum domorum, vel per fænum falcatum extra sepes vel extra fossata; erit in misericordia Regis de pecuniâ suâ, nisi habeat viridarios, vel forestarios Regis ad Warrantum.*

LXIX. *Similiter qui arcus vel sagittas portaverint vel Canes duxerint sine Copulâ per forestam Regis, & inde attaintus fuerit, erit in misericordia Regis.*

LXX. *Videnda sunt in reguardo nova assarta & vetera inbladata post ultimum reguardum, & quo blado vel legumine inbladata sunt.*

LXXI. *Nova assarta in manu Regis, si vetera assarta inbladata sunt de frumento vel silagine, unaquaque acra dabit regi XII. denarios de illâ vestiturâ, & si inbladata fuerint de avendâ, vel hordeo, vel fabis vel pisis, vel alio legumine, unaquaque acra dabit regi VI. denarios de illâ vestiturâ; Et sciendum est quod tempore Henrici Regis F. Mat. IMP. permisum erat intrâ metas Forestâ fossata fieri loco sepium.*

LXXII. *Exiit Edictum à Rege, ut quicunque in regno suo forisfecisset Clerico, aut alii viro religioso, non cogeretur satisfacere illi: sed si Clericus, aut alius vir religiosus, forisfecisset alicui laico, statim compelleretur ad satisfaciendum illi: unde factum est quod viri religiosi ad redemptionem coacti sunt: The main end of all was Exchequer profit; which this Richard too much labouring for by published Edicts at home, and contending for by Arms abroad, at length lost it, and together unluckily his Life.*

* Al. renovationem.

C H A P. X.

King John and his Grand Charter.

THE burden of the State after *Richard's* death, was laid upon his Brother *John Earl of Moreton*. He in the immediate times after his Inauguration, made divers Laws, touching Sale and Prices of French Wines, reported in *Roger of Hoveden's Annals*. But all conveniency of Merchandize and they were so incompetent, that they were almost as soon abrogated, as enacted.

Confuetudines Scaccarii super debitibus D. R. inquirendis.

*Roger de
Hoveden pag.
463.*

I. *Statutum est in Anglia, & per praeceptum R. Joannis confirmatum, quod nullus Vicecomes recipiet aliquem ad presentationem Baronis in Seneschallum, qui non possit respondere de misericordia pertinente ad transgressionem fidei, si forte in eam inciderit. Quod autem Seneschallus ad presentationem Baronis, quod pacem faciat Vicecomiti de debitibus domini sui ad Scaccarium, intelligendum est quod super Computum Vicecomitis mittatur in prisonam statutam, secundum legem Scaccarii, & debitum Regis capiatur de catallis Domini sui, secundum legem Scaccarii: Quod si fidem praestitam non servaverit, ita quod ad Computum Vicecomitis non venerit, vel si venerit & sine Licentia recesserit, corpus ejus capiatur, & in prisonam ponatur statutam, nec delibetur nisi per speciale mandatum D. Regis. Item mittatur ad terram Domini cuius seneschallus defecerit, & de catallis suis solvatur pecunia que debetur, secundum legem Scaccarii, & si pecunia illa debeatur pro fine terra, & catalla non inventantur, unde pecunia illa solvatur, ipsa terra, pro qua finis facta fuit, capiatur in manum D. Regis, & teneatur donec illa pecunia solvatur, secundum legem Scaccarii.*

II. *In pena lesionis fidei, seneschallus, qui finem transgressus fuerit, nunquam de hoc vel de alio debito per fidem suam credatur, vel recipiatur, nec dominus credatur, vel recipiatur de hoc debito, nisi de gratia & voluntate Regis, secundum legem & consuetudinem Scaccarii.*

III. *Fecit (not long after) generaliter acclamari, ut legalis assisa Panis inviolabili sub pena Collistrigiali observaretur: Quae probata fuit per pistorem Gaufridi filii P. Justitiarii Anglie, & pistorem R. de Thurnam. Ita quod pistores poterint sic vendere & in quolibet quarterio lucrari III. Denarios, exceptis brennio & 2. panibus ad furn. & 4. servientibus IV. obolos, 2. gracionibus 1. quadrantem, & in busia III. denarios, & in bultello obolum: with a proportionate price and weight twixt Corn & Bread at large reckoned.*

IV. *Celebrating the Christmas at Bristol, Capturam avium per totam Angliam interdixit.*

*Math. Paris
pag. 278.*

V. *Precepit per forestas totius Anglie sepes comburere, & fossata complanare, datis frugibus circumquaque bestiis ad devorandum.*

*Idem pag. 303
& 304.*

VI. *After transaction of that great controversie twixt the King and Innocent III. Bishop of Rome, publick Commandment was given for observation and maintenance of the Laws of Henry his great Grandfather.*

Hen. I.

VII. *Denuntiatum est praterea Vicecomitibus, Forestariis aliisque Ministeriis Regis, sicut vitam suam diligunt, ne à quopiam aliquid violenter extorqueant, vel alicui injuriam irrogare presumant, aut scottalla alicubi in regno faciant, sicut facere consueverunt.*

*Idem pag.
322.
But*

But notwithstanding those general forms of reformation, a more serious and recapitulated was desired by the whole Baronage; A grand Council is appointed at Paul's in London, and there by Stephen Archbishop of Canterbury, is produced a Copy of Henry Beaufort's free Charter (which is before expressed) and the same delivered to the chief Clerk there, to be openly read & pronounced. As soon as the Barons heard it, was a uniform consent, that maintenance and assertion of those liberties should rest, as of more dear account, in their Martial resolutions, than bloud or life. Nay in short space after, mutual combination by solemn Oath taken upon the Altar was made among them, that their band of Fealty dissolved (for so they deemed John's Government had occasioned) their Swords should compel him to enseal their demands. To that place, which now only is called the Temple (then the new-Temple) where the King lay in Warlike order, they go to execute their designs; He binding himself with an interlocutory Sentence, and giving caution of future satisfaction, takes day until Easter following; But all was no less delusory, than dilatory: Nor any thing done with a face of composition, until the appointed meeting of the King and Barons (whose part hourly increased) in Renimed, alias Rungmede near Staines in Middlesex; whereof in the marriage of Tame and Isis, thus sings no small Favourite of the Muses;

Camden in
agro Middle-
sex.

*Subluit hic (i. Thames) pratum quod dixit Renimed Anglus,
Quo sedere Duces armis annisque verendi:
Regis Joannis cuperent invertere sceptrum,
Edvardi Sancti dum leges juraque vellent,
Principe contempto, tenebroso e carcere duci.*

Where an instrument of publick liberties, through mediation of what is above all law, Necessity, was, as you shall hear it speak, sealed and delivered to the Baronage.

Matth. Paris
pag. 341. &
seqq.

JOHANNES Dei gratia Angliae, &c. Sciatis nos intuitu Dei, & pro salute Animæ nostræ, & antecessorum omnium, & hereditum meorum, & ad honorem Dei, & exaltationem S. E. & emendationem regni nostri, per consilium venerabilium patrum nostrorum Stephani Cant. Archiep. totius Anglie Primate, & S. R. E. Cardinalis, Henrici Dublinensis Archiep. Will. Londoniens. Episc. Petri Wintoniens. Jocelini Bathoniens. & Glacon. Hugonis Lincoln. Walteri Wigorniens. Will. Coventrensis, Benedicti Roffensis Episcoporum, & M. Pandulphi D. P. Subdiaconi, & familiaris fratri M. Militia Templi in Anglia, & Nobilium virorum Will. Marescalli Com. Penbrie, Will. Com. Sarisburiensis, Will. Com. Warrene, Will. Com. Arundel, Alani de Leneia Constabularii Scotiae, Warini F. Genoldi, Petri F. Herberti, & Huberti de Burgo Seneschalli Piclatiae, Hugonis de Neville, Matthei F. Herberti, Thome Basset, Alani Basset, Philippi de Albeni, Robert de Ropelle, Joannis Marescalli & Joannis F. Hugonis, & aliorum fidelium nostrorum.

V. flat. West.
I. cap. 5. art.
cler. ca. 15.
de Election.

VIII. In primis concessisse Deo, & hac presenti chartâ nostrâ confirmasse, pro nobis & hereditibus nostris in perpetuum, quod Anglicana Ecclesia libera sit, & habeat jura sua integra, & libertates suas illæsus, & ita volumus observari, quod apparet ex eo quod libertatem electionum, que maxima & magis necessaria reputatur Ecclesia Anglicana, merâ & spontaneâ voluntate ante discordias inter nos & Barones nostros manifestè motam, concessimus & chartâ nostrâ confirmavimus, à D. PP. Innocentio tertio confirmari, quam & nos observabimus, & ab hereditibus nostris in perpetuum bonâ fide volumus observari.

IX. Conces-

IX. *Concessimus etiam, & omnibus liberis hominibus nostris regni Angliae, pro nobis & heredibus nostris in perpetuum, omnes libertates subscriptas, habendas & tenendas eis & heredibus suis, de nobis & heredibus nostris.* These premisses are in the grand Charter of *Henry the III.* commonly published in our printed Statutes, nor in any word of moment is there a difference found 'twixt this of *John* and that of *Henry*, until the prohibition of disparagement in marriage of young Wards; which thus commandeth, *heredes maritentur absque disparagatione*: to this is added in a continued sentence; *Ita tamen, quod antequam contrahatur matrimonium, ostendatur Propinquis de consanguinitate ipsius heredis.* The VII. and VIII. Chapters of Widows and their Quarentines, with that of the King's debtors, are also in like words following: But this of *John* hath this further additament.

X. *Si quis mutuo acceperit aliquid a Judeis, plus vel minus, & moriatur antequam debitum illud persolverit, debitum illud non usaret quamdiu heres est infra etatem, de quounque tenet; & si debitum istud incidat in manus nostras, nos non capiemus nisi catallum contentum in charta:* who elsewhere seeks the true understanding of the Statute of *Merton* under title of usury, must still remain in an extravagant search, until he return to that exposition which lies here open.

XI. *Si quis moriatur, & debitum debeat Judeis, uxor ejus habeat dotem suam, & nil reddat de debito illo; Et si liberi ipsius defuncti, qui fuerunt infra etatem, remanserint, provideantur eis necessaria, secundum tenementum quod fuerit defuncti: & de residuo solvatur debitum, salvo tamen servitio dominorum: simili modo fiat de debitibus quae debentur aliis quam Judeis.*

XII. *Nullum Scutagium vel auxilium ponam in regno nostro, nisi per commune consilium regni nostri* (according is a grant of *E. I.* in *Thomas of Walsingham's history*) *nisi ad corpus redimendum* (in the Norman Customary it is *Aide de rançon*, which in an ancient Manuscript of *xxi Ed. I.* in the case of *Robert of Wentham*, I have seen released between common Persons) and *ad primogenitum filium nostrum militem faciendum, & ad primogenitam filiam nostram semel maritandam;* *Et ad hoc non fiet nisi rationabile auxilium:* simili modo fiat de auxiliis de Civitate Londoniense. Here is adjoyned the general Franchises of *London*, other Cities, Boroughs, Towns and Ports verbatim as in the IX. Chapter, which concluded ensues.

XIII. *Ad habendum commune consilium regni de auxiliis assidendis aliter quam in tribus casibus predictis, & de Scutagiis assidendis, submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites & majores Barones regni, singillatim per literas nostras; Et praeterea faciemus submoneri in generali per Vicecomites & Ballivos nostros, omnes alias qui in Capite tenent de nobis, ad certum diem, scilicet ad terminum 40. dierum ad minus, & ad certum locum; & in omnibus literis submonitionis illius causam exponemus, & facta submonitione, negotium procedat ad diem assignatum, secundum consilium eorum qui presentes fuerint, quamvis non omnes summoniti venerint.*

XIV. *Nos non concedimus de cetero alicui, quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, & ad faciendum primogenitum filium suum militem, & ad primogenitam filiam suam semel maritandam; & ad hoc non fiat nisi rationabile auxilium:* Unto the XVIII. Chapter inclusively of *Henries Charter* from hence, are in both almost the same syllables; But whereas the printed close of the same Chapter, is, *Salvis uxori ejus (i. e. of one that is dead) & pueris suis rationabilibus partibus suis,* here is further:

XV. *Si quis liber homo intestatus deceperit, catalla sua per manus propinquorum*

Merton cap. 5.
Confer. 35. li.
6. fo. 61. Plo.
Com. fo. 236.
Bract. lib. 2.
cap. 26. sect. 2.
& indicem ad
Plo. Comm.
part 1.

Walsing. hist.
E. I.

pinguorum parentum & amicorum, per visum Ecclesie distribuantur (see Art. IX. in Hen. I.) *salvis unicuique debitis, que defunctus ei debebat;* and in divers old written Copies of the common and usual *Magna Charta's*, the self same words continue that Chapter; All is in both alike unto the end of the provision for safe-conduct of Merchants; But thereto in this historical report succeeds,

V. in H. 2.
art. 5.

XVI. *Liceat unicuique de cætero exire de regno nostro, & redire salvò & securè per terram & per aquam, salvâ fide nostrâ, nisi in tempore guerræ per alignod breve tempus propter communem utilitatem regni, exceptis imprisionatis & utlagatis, secundum Legem regni, & gente contra nos guerrinâ, & mercatoribus, de quibus fiat supradictum est.* What follows in either is the same as well in words as sense. And as we have now in every Man's hands a Charter of the Forest also distinct from the other, so had the Barons then to them granted; and very small or no difference is found between theirs and that, whose fore-front is since signed with King Henry's Name.

I suppose it fit place and time here to give remembrance of an escaped, and in every impression that I have seen allowed fault, in the VII. Article of the Foret Charter, which by little alteration, and thus pointing, is corrected; *Nullus forestarius vel alius balivus de cætero faciat Scottallum, vel colligat herbas, (you may read garbas) vel avenam, vel bladum aliud, vel agnos, vel porcellos, nec aliquam collectam faciat (nisi, so is the Print but in King John's Copy, and in divers Manuscripts of our Statutes, one having the subscribed authority of Exam. per Rot. I have warrant to read, and distinguish with a full period at faciat, and turning nisi into & go thus forward) & per visum & Sacramentum XII. Regardatorum, quando faciunt reguardum (taking away the Point there) tot forestarii ponantur ad forestas custodiendas, quot ad illas custodiendas rationabiliter viderint sufficere;*

How much the fence differs, small observation soon discovers.

In Bibliotheca
D. Ro. Cotton,
à Connington
Eq. Autati.

Stat. Annal.
pag. 258.

The concluding Date of these granted Franchises, and restored Laws, John Stow saith was, Given by our hand in *Runingmede*, betwixt *Stanes* and *Windsor*, the *xvi. of June*, the *xvii. of our Reign*: Unto which all the whole Realm was sworn. But the fluxile nature of this deceitful Prince, aided by Pope *Innocent III.* and his Nuntio *Pandulph*, soon loosed that kind of Royal faith and promise; As quick were the Barons (they by Oath had bound themselves to constrain him by Arms, if their expectations in his future carriage were frustrate) and ready to, and did, revolt. Death of the King prevented their projects, which for this purpose in the IX. Year of the succeeding *Henry Fitz John* (as the first page of our printed Volumes of old Acts of Parliament give to every Reader testimony) were with some ease attained, and by his Posterity, as the main freedom of the *Englisb* Common-wealth, hath been since more than thirty times, by the true authority of the State, in their High-court, confirmed.

Soli Deo Gloria.

Chronologia huic nostræ inserviens EPINOMIDI.

<i>Ante CHRISTUM.</i>	Brutus ille, quem Trojanâ aiunt, sed potissimum Bardi, stirpe orisundum, à quo post Samotheos (magis Semnotheos) sumus auspicati, sed aliena nempe & dubia fide fertur ad pulisse.
CIC. C. VIII.	Dunvallo Molmutius.
CCCCXII.	Martia R. Guinthilin <i>Uxor.</i>
CCCLVI.	Julius Cæsar, <i>Is primum Romanis ostendit Britanniam, &</i> <i>territa Britannis terga.</i>
L V.	Claudio Cæsare deducta Camalodunum <i>colonia Insuleque</i> <i>pars in praesidialem redacta provinciam.</i>
<i>Ab Incarnato Deo.</i>	Commodo <i>Imp. ob signatam recepit palingenesiam Lucius</i> <i>Rex ab Elutherio PP.</i>
LII.	<i>Sed Camdeno fastis consularibus Beda & Ninnio rationibus subductis</i>
CLXXX.	<i>Britanniam Anglo-Saxones advehuntur, Theodosio 7<i>un. Rom.</i></i> <i>Imp. Nec multis inde curriculis Annorum interceptis He-</i> <i>ptarchas inter que jam Anglia dispersita.</i>
<i>Ab Incarnato Deo</i>	<i>CDXLIX.</i>
<i>Floruere</i>	<i>Æthelbertus Rex Cantii, Primus Anglo-Saxonum (felicissi-</i>
DLXI.	<i>mo ducta sibi in uxorem auspicio Bertha Francorum Regis</i> <i>filia) Princeps Christianus.</i>
DCCCLXXII.	Alfredus <i>sen</i> Aluredus <i>Rex.</i>
DCCCCLIX.	Edgarus <i>Rex.</i>
CICLXVI.	Willielmus Normanniae <i>Dux Haroldum conferta in pla-</i>
	<i>nitate juxta Haltings in agro Suthsexiensi manu, atque An-</i>
	<i>glorum copias devicit. II. Nempe Id. Octobr. & regio se ini-</i>
	<i>signavit hic titulo.</i>
CIC. LXXXVIII.	Willielmus Rufus primi <i>Filius.</i>
CIC. C.	Henricus <i>primus Rufi Frater.</i>
M. CXXXV.	Stephanus Blesensis.
<i>Ab Incarnato CHRISTO</i>	
CIC. C. LIIL	Henricus <i>filius Matildis Imp. & Galfredi Com. Andega-</i>
	<i>vensis.</i>
M. C. LXXXIX.	Richardus <i>primus Henr. Fil.</i>
M. C. LXXXIX.	Joannes <i>R. Richardi Frater.</i>

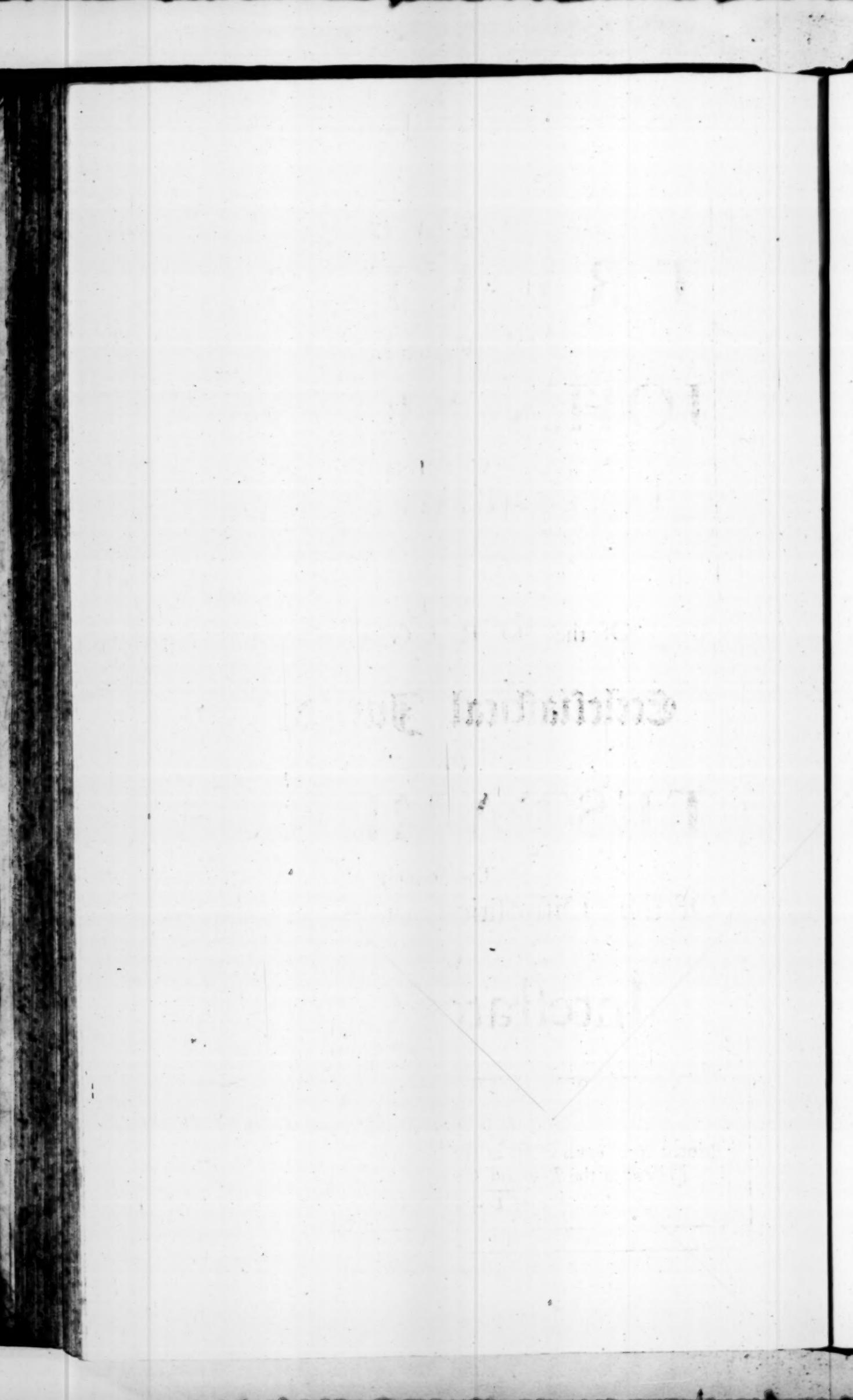
F I N I S.

TWO TREATISES Written by JOHN SELDEN OF THE INNER-TEMPLE, Esquire. OF TESTAMENTS: The First, Of the ORIGINAL OF Ecclesiastical Jurisdiction OF TESTAMENTS: The Second, Of the Disposition or Administration OF Intestates Goods.

The First,
Of the ORIGINAL
OF
Ecclesiastical Jurisdiction
OF
TESTAMENTS:
The Second,
Of the Disposition or Administration
OF
Intestates Goods.

Printed for Thomas Basset at the George in Fleet-street, and Richard Chiswell at the Rose and Crown in S. Paul's Church-Yard.

M D C LXXXIII.





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P A R T

C H A P. I.



P A R T I.
OF THE
ORIGINAL
OF
Ecclesiastical Jurisdiction
OF
TESTAMENTS.

C H A P. I.

The Intrinscal Jurisdiction not given to the Church by the Civil Law.



THE Jurisdiction of Testaments being either *Intrinscal* or *Extrinscal*, (that is) either touching Probate, or Recoveries of Legacies: First for the *Intrinscal*, it is clear that it came not to the Bishop by Imitation; or otherwise, from the Imperial Civil Law: for by the elder part of that Law, regularly the Probate or Aperture of Wills was before the (a) *Praetor*. And afterward the ob-signation, insinuation and Probate of them in *Rome*, was before the *Magister Census*, or (b) *apud officium Censuale*, as it were before the Barons of our Exchequer; and that continued into later time. And the same Officer by the name of (c) *magistris*, or *generalis* in *Constantinople*, had the same authority: But also afterwards as well the *Questor's Seal*, as that of the *generalis* became to be used at the ob-signation, and his authority also in the Probate or Aperture. And

(a) ff. Test. quemadmodum aperiant. per tot. Et vide etiam Auth. 74. c. 2. sic igitur Licentia.

(b) De Episc. l. 41. & tit. de testam. l. 10. & 23. & Caput Theodos. II. 4. tit. 4. l. 4. Ubi visendus interpres vetus.

(c) Authent. 44. & ibid. Cujacius, & videlicis Gloss. Graecobarb. Meursii in 29186.

Of the Original of Ecclesiastical

(d) Novel 44. formulæ vet. Testam. aperiendorum, vide-
tis I. Paul Regest. sentent. l. 4. tit. 6. &
Marculph. Formul. l. 2. c. 37. & 38.

(e) C. de Episc. &
cler. l. 41. repetita.

(f) Hostiens. in pro-
c. sum. & verifi-
cationes canonist. passim.

And the Emperour *Leo* (d) about the year 890. transferred all that herein belonged to the *Generalis* into the *Questor's* place ; yet so, that some other Civil Magistrates had the like authority : and what was done before these in *Rome* and *Constantinople*, was in other Cities before their Chief Governours, as *Defensores* or *Praefides* : neither was the Church permitted to have to do with the Injunction of Testaments, but expressly forbidden by a rescript (e) of the Emperour *Justin* : nor is any thing that gives it either among the *Novells* of the *Greek Empire*, or in the *Lombarda*, or *Capitulares*, which have (f) been reputed as parts also of the Imperial Law.

C H A P.

C H A P. II.

Nor by the Canon Law.

Neither in any General Council, or other part of the received Canon Law, doth any Testimony occur, that gives the Church this *Intrinsic Jurisdiction*. But in the fourth Council of (a) *Carthage* holden in the year 398. it was ordained, *Ut Episcopus tuitio nem testamentorum non suscipiat*. And this being then established by two hundred and fourteen Bishops, was afterwards made a part of (b) the Decrees, or *Canon Law*, collected by *Gratian*, and published and authorized by Pope *Eugenius* the Third about 1150. and the Gloss upon that Canon interprets *tuitio* for *Aperture* or *Probate*. So also Pope (c) *Innocent* the Fourth understands it: *publicatio*(faith he) *fieri non debet apud Episcopum*; and he vouches that Law, (d) *Consulta ducalia tit. de Testament.* to prove it. *Speculator, Hostiensis* and others of the same time, and generally the rest that follow them, make the *Civil Law* only the square of the Jurisdiction of the *Probates*; and so it is truly affirmed in our Books, that the *Probate* belongs not to the Church (e) by the Spiritual Law; neither is any such thing given by any later (f) *Bull*, or *Decretal* from the Bishop of *Rome*.

(a) Cap. 12.
(b) Diff. de secular negotiis, cap. 5.
(c) Ad c. nos quidem extra tit. de testament.
(d) Tit. de Instrum. edit. S. oftens. 34. vid. D.D. ad c. nos quidem, & c. si ha redes extra rig. de test. & Linwood de test. c. item S. infin. & cap. stat. S. approb.
(e) 2 R. 3. Test. 4. 14 H. 7. fo. 12. b.
(f) Quod discimus ex Bullarii summa quam edidit S. Guaranta.

C H A P. III.

The Extrinsecal Jurisdiction by the Civil Law, in whom.

For the *Extrinsic Jurisdiction* that gave *Recoveries of Legacies*, by the Imperial Civil Law, where the Legacies were *in pios usus*, the (a) Bishop of the Diocese sometimes by himself, sometimes with the Civil Magistrate, provided for the execution of the Testators meaning: otherwise the Jurisdiction of Legacies, and what else falls under Testamentary disposition, was and (b) is the Magistrates only.

(a) C. de Episc. & Cler. l. 28. Nulli, & l. 49. si quis ad declinand authentic. 125. c. 10. & vid. c. 11.
(b) ff. de Petit.hared. & tit. de legat.

C H A P. IV.

In whom by the Canon Law.

B^{ut} by the *Canon Law*, the general care of execution of Testaments is committed to the Bishop; yet I find not any *Canon* to that purpose received into the Body of that Law, now in authority, before the time of the *Decretals*; which have out of some Council of *Mentz*

(a) *Extr. de test.* these words, *viz.* (a) *Si heredes iussa Testatoris non impleverint, ab Episcopo loci illius omnis Res que eis relicta est Canonice interdicatur, cum fructibus & ceteris emolumentis, ut vota defuncti impleantur.* Out of what Coun-

(b) *Lib. 15. c. 34.* cil of *Mentz* this is taken, I have not yet learned; (b) but in the same syllables it occurs in *Burchard*, that lived about six hundred years since, with the Marginal Note of *ex Concilio Moguntino.* What other Texts are, touching the power of the Canons over performance of Testaments, have reference to that course ordained by the Civil Law, where any thing was given *in pios usus*, not to a general Jurisdiction; for so is the *Canon Nos quidem extr. tit. de testam.* Neither is that *Canon Ultima Voluntas* in C. 13. q. 2. taken out of *S. Gregory*, otherwise to be understood, if you interpret it as you

(c) *Videsis Greg.*
lib. 3. Epist. 9. &
lib. 9. Epist. 20. & places of *Gregory* whence it is taken: but the Canonists generally upon that *Canon Si heredes*, take it, that *executio testamentorum ad Episcopos spectat.* And so those old ones Pope *Inno-*

(d) *Vid. Gonzal.*
Zuarez Prax. Eccles.
Lam. 2. Pralud. 2. & the (d) latter follow them, yet they commonly restrain it (and that in

Se^tc. 44. & Zerula prop. Episcop. verb. practice in other States) to Legacies given *in pios usus.* And in the

Council of Trent, where twice the Bishops power over Testaments is provided for, (e) nothing is spoken of but Commutations of Legacies, and of such as are given *in pios usus:* yet from Ancient time

ult. de reformat. c. 4. both the *Intrinsic* and *Extrinsic* Jurisdiction of Testaments made of personal Chattels in *England*, hath been and is in the Church, except in places where special Custom excludes it: the original whereof being not sufficiently found in either of these Laws (the Civil and Canon) divers parts of which according to the various admission of several Estates have been much dispersed through *Christendome*, and some remain now exercised by *imitation* among us; It rests, that disquisition be made for it in the Monuments of the Kingdom, that according as they together with the Canons afford light, some conjecture may be had touching the Antiquity and ground of it.

C H A P.

C H A P. V.

Of the Intrinsic Jurisdiction in the Saxons time.

The Eldest Testament that I have seen made in *England*, is that of King Edgar's time, made by (a) one *Birthric a Gentleman* or (a) Lamb. *Peramb.* *Thane* (it seems) of great worth, and his Wife *Elswith*; wherein they devile both Lands and Goods; and in the end of the Will fayes her husband: *Ans ic wære for goder lufan minne leofan Blaford. ¶ Se re þaſige þe ær g man nincepre cybe aſenbe;* And I pray for Gods love my kefe Lord, that he doe not suffer that any man our Testament do break.

Cant. p. 548.

It may perhaps thence be collected, that the Protection or Execution of this Testament was within the Jurisdiction of the Lords Court, as also the Probate; and that especially, because divers *Lords (b) of Mannors* have to this day the Probate of Testaments by Cu-^(b) *Henfloses Case* ^{9. Rep. b.} stom continued, against that which is otherwise regularly settled in the Church. But the same Testament being for Lands as well as for Goods, it may be that this Clause had reference to the Lord in regard of the Land only, (to the Alienation of which, his Assent might be requisite) or to denote him for the Testators best friend, as one chosen Overseer of his Will; and indeed he desires all other good people to see his Will be not broken; which makes me only offer it, as what another mans fancy may work on: but I conceive not out of it enough to prove either way anything touching the Jurisdiction of Testaments.

Nor in the Saxon times appears any thing that can sufficiently direct us to know, how it was exercised here, unless out of that example of *Siverth of Durham's Testament*, in the (c) Book of *Ely*, (c) *In Bibliothec. Cottoniana.* you may collect, that the Probate was supply'd in the life-time of the Testator by Inrolment, or leaving an Indented Copy of it with the *Alderman* or *Sheriff* of the County, in whose *County-Court* the most of proceedings of Temporal Justice, and of the Spiritual also (for the Bishop sat with him, as in his *Consistory*) were in the Saxon times: for so much perhaps may be conjectured out of it, as we faithfully here relate it. *Siverth* in King Edgar's time, lying sick at *Lindane* in the *Isle of Elie*, makes his Testament, and sends for *Brithnorth Abbot of Elie*, and divers of the Monks, and others of the Gentry; and the Abbot writes the Testament *in tribus Chirographis, coram* (so are the words of the Book) *cunctis fecit recitari, lectumq; fecit incidi, unamque partem Chirographi retinuit Siferthus, Alteram autem dedit Abbati, tertiam vero misit statim per prefatum Britbelnum* (that was one of the Gentlemen of the Countrey then present) *Ailvino Aldermano, qui tunc temporis degebatur in Elie, & petiit ab illo ut suum Testamentum stare concederet, quomodo Abbas illud scriperat, & in lib. concessione ordinaverat apud Lindane coram predictorum Testimonio virorum.*

Cum itaque Ailvinus Alderman hoc audisset, & Chirographum vidisset, remisit illico ad eum Wlnothum de Stowe cum Britbelmo, sciscitatusque est

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ab eo quid aut quomodo vellet de Testamento suo : qui mox per eisdem renuntiavit ei, sic suum Testamentum absque omni contradictione vel mutatione se velle stare, sicut presatus Abbas illud in Chirograpto posuerat, quod ut Ailwinus Alderman audivit, totum concisit, ut staret sicut ipse Siverthus Testatus erat. But indeed, in it Lands lying in *Durham* were deviled to the Abbey ; and so, it was not only of personal Chattels.

The *Saxon* Laws are very silent of any thing touching Testaments ; and we must remember, while we think of that example of *Siverth of Durham*, that the Ecclesiastical and Temporal Courts of Common Justice, held as one by the Sheriff and Bishop, were not severed as now, into the Consistory, and County Court, until the *Conqueror* did it by a Law yet remaining and elsewhere published (a).

(d) *V. Spicilegia in Eadmerum.*

In what intercedes from this time, until about *H. 2.* I find not any Testimony that gives light to this purpose ; as the *Saxon* Laws, so those of the *Conquerour*, and of *H. 1.* and *H. 2.* mention nothing that tafts of either kind of Jurisdiction of Testaments ; only of a Charter of *H. 1.* extant in *Matth. Paris*, and in the *Red Book* of the Exchequer this occurs, *Si quis Baronum vel hominum meorum infirmabitur, sicut ipse dabit vel dare jussit pecuniam suam, ita datam esse concedo.* This may perhaps seem to denote, that the Kings Court determined of Legacies, especially of the Kings Tenants.

But indeed it proves not so much. But the eldest passage that proves clear enough here, is that which makes the *Intrinsic* Jurisdiction to have been in the Church, and the *Extrinsic* in the Kings Court ; I mean that which is found in the Treatise attributed

(e) Lib. 7. cap. 6. to *Randall of Glanvill* Chief Justice under *H. 2.* where he says, &c. that if a Legacy be detained, the Executors or other friends of the Testator, were to get the Kings Writ to the Sheriff, commanding quod juste & sine dilatione facias stare rationabilem divisum, (that is, the Bequest or Legacy) N. sicut rationabiliter monstrari poterit quod eam fecerit, & quod ipsam stare debeat, &c. And it is plain by the words there preceding and subsequent, that it hath reference to moveable or personal possessions, not to Lands, &c. So that it seems clear by that in *H. 2.* his time, the Jurisdiction of personal Legacies was in Secular Courts. But if the Issue in Secular Courts upon that Writ came to be, whether the Testament were true or no, or well made, or whether the thing demanded were in fact bequeathed, Tunc (says he) placitum illud in Curia Christianitatis audi debet, & terminari, quia placitum de Testamentis coram Judice Ecclesiastico fieri debet, & per illorum qui Testamento interfuerint testimonia secundum juris ordinem terminari : that is, as it must be understood, that upon issue of bequeathed or not bequeathed, of Testament made, or no Testament, the Tryal must have been otherwise than by the practice of the latter (f) Law, wherein the Testament is traversable, and the Traverse tryable in the Kings Court by certificate to the Temporal Court from the Ecclesiastical, as at this day, of *Institution*, *Bastardy*, and *Profession* in Religion, and the like : and thence may it be well concluded, that at this time by the practised Law, the Probate or the Intrinsic Jurisdiction was in the Church ; for as the *Institution*,

(f) 29 Ed. 3. 33. a.
44 Ed. 3. 16. a.
Perk. 493.
22 H. 5. 52.

Bastardy

Bisbary and *Profession* are to be certified, because within the Bishops Jurisdiction. Some recorded Testimonies remain of the first and third, and the nature of the Marriage or Cohabitation (that directs in the second) is to be judged of only in the Spiritual Courts; so the *Validity of the Testament*, or the truth of this or that particular Legacy was to be certified from the Spiritual Court, because the Probate had there proceeded, and the Copy there remaining was most authentick; otherwise to what purpose should they have lent to the Spiritual Court in such a case?

But on the other side, as in the case of *Institution*, *Profession* and *Bisbary*, the consequence of them, which are objects of their Extrinsecal Jurisdiction, as *Descent*, *Exclusion* from Inheritance, gaining it by a descent cast, or legal making a Church full, or the like are determinable only at the Common Law; so the consequence of a Testament, that is, the Recoveries of Legacies, and such like, as it seems by that Writ, were in the Temporal, not in the Spiritual Court. I know the authority of that Treatise is suspected, and some of the best and ancientest Copies having the name of *E. de N.* which I have heard from diligent searchers in this kind of Learning, affirmed to have been sometimes *E. de Narborough*, and not *R. de Glanvills*, it hath been thought to be anothers Work, and also of later time. But, as on the one side, I dare not be confident, that it is *Glanvills*, so I make little question, that it is as ancient as his time, if not his Work. The Tests of the Precedents of Writs under his name, the language, especially the name of *Justitia* always for that which we now from ancient time call *Justitiarius*; and *Justitia* was so used in (g) Writers under (g) *Ita Jo. Salisbur-
H. 2.* and the Law delivered in it tasteth not of any later Age. And genfis de Nugis Cu-
howsoever it comes to pass, the *Regiam Majestatem* of Scotland pub- & 15.
lished by Command of *David the First* under the time of our *H. n. 1.*
hath for the most part the same syllables with this supposed *Glan-
will*, and expressly (b) the very passages and the Writ that we have
now here noted for Testaments. (b) *Regiam Majestat.*
lib. 2. cap. 32.

That Extrinsecal Jurisdiction of those times in the Secular Courts, was perhaps denoted by those words in the Testament of *Theobald* Arch-Bishop of Canterbury under King *Stephen*, (1) *Supremis* (faith (i) *Jo. Sarisburg-
he deficienctum voluntatibus suum accommodant jura favorem*, where Epist. 57.)
he devises only personal things and uses. I think, *Jura* is rather to be taken for the Common Law, than the Spiritual; which is, in the most usual phrase of that time, designed by *Canones*.

In this time of *Hen. 2.* divers fierce Controversies fell between the Law and Spiritual Jurisdiction, and the particulars of them are largely related at the end of *Quadrilogus*, in *Gervase of Dover*, in *Roger of Wendover*, in *John of Salisbury*, and *Matthew Paris*, but in him most abruptly; yet not the least mention is in them touching any matter of this Jurisdiction; and in the main Cases of our Spiritual Courts depending under *H. 2.* and sent by appeal to *Rome*, which yet remain in the Epistles of *John of Salisbury*, there is not one that touches upon either of these Jurisdictions of Testaments in the Church; but indeed there is one that may seem somewhat to prove for that which

(k) Epist. 89.

we note out of *Glanvill*, concerning the Intrinsical Jurisdiction at that time in the Temporal Court: for in an Appeal sent to Pope *Alexander the Third*, the Case, as *John (k) of Salisbury* relates it, was, that one *Richard de Ansta in foro secularium Judicium petitionem hereditatis ad bona avunculi obtainenda instituit*, against *Mabile de Franck-villa*, being Daughter to *William of Sackvill*, to whom the Plaintiff was Nephew by his Sister: and the point of the issue between the Daughter here and the Nephew, being upon the Bastardy of the Daughter, the Spiritual Court had the Tryal of it. If (*bona*) here be understood for Chattells, as in our Law it is, and so restrained, then was this *petitio hereditatis*, as a Suit for *Sackvill's Goods*, grounded also, as it seems, upon a Testament of his: for in the relation of the Case also, *Richardus insistebat*, saies the Author, *institutioni Avunculi, petitionem hereditatis instituens*; and on the other side, *Mabile maxime Patris novissime voluntati innitebatur*: which shews, that here was a Testament in the Case, and a Suit for what was challenged by it in the Temporal Court: But *hereditas* and *bona*, it is likely, included here (as by the Civil Law) all possessions of the Ancestor, both real of Inheritance, and personal, that is, the *universum jus defuncti*, and not only our inheritance; although it doth also amongst some (l) Civilians denote no more, if at least they understand aright what they say, while they write, that *consuetudo est in Anglia quâ primogenitus succedit in omnibus bonis*: and in this Case, if the Issue had been upon the Truth of the Testament, as it was upon the Bastardy, it had been referred also to the Spiritual Judges.

(l) Barth. ad tit. de summa Tr. l. 1.
num. 42.

C H A P.

C H A P. VI.

Whence Linwood thinks the Jurisdiction Intrinsecal came to the Church.

BY what is before delivered, it appears, that the *Intrinsecal Jurisdiction* or *Probate* was in the Church; and that by express testimony, as anciently as the time of H. 2. and by all probability it was in settled use before that time, being spoken of in that Treatise called *Glanvill's*, as a known course of proceeding: although indeed yet I could never see an express Probate in any particular case, elder than about H. 3. But the beginning or course of this *Intrinsecal Jurisdiction* in the Church, is not for ought I have yet learned, extant: however *Fairefaxe* tells us, that it was by an Act of Parliament, which 2 R. 3. tit. *Testam. 4.* perhaps he took from that of *Linwood*; *Hec libertas (Ecclesie) quoad approbationem hujusmodi (faith Linwood) fundatur super consensu Regio, & suorum Procerum (in talibus) ab antiquo, concessa.* Where he means by *in talibus*, their power of committing of Administration of Intestates goods, as it is plain by his quotation of that Constitution of Arch-Bishop *Stafford* tit. *de immunitate Eccles. accidit. novitate perversas guidam etiam*: That power was given, as I guess, by Parliament in King *John's* time: but thereof more in due place. And *Linwood* addeth, *Item fundatur super consuetudine in ea parte de scientia Regum Anglie, diutius conservata*: Which is indeed, that it is founded upon the Common Law or Customary Law of the Kingdom; or that it hath like antiquity or original as other parts of the Common Law, that is, immemorial Custom. For though it be exercised according to the Civil and Canon Law in the Spiritual Courts, with some reference had to the Customs of *England*; yet it is clear, that the power which the Spiritual Courts have to exercise it, is merely by the Common Law; although we find not when it came first to them, no more than we find divers of our settled Courses and Maxims in the Common Law; touching which yet we can without much difficulty prove, that at such or such times they were not in practice; as perhaps in the more ancient Ages, this was not in these Courts. But that it was originally belonging to the Crown, that is, to the *Temporal Courts*, which are all, and ever were derived from the Dignity Royal, is affirmed also, as in that cited in *Hensloe's Case*, out of *Jocelin's History of the Arch-bishop of Canterbury*, in a Writ (a) 2 H. 5. that prohibiteth the Arch-bishop of York to call the Executors of the Tenants of S. Leonard's Hospital to prove their Wills before him; because as the words are, *placita de cognitionibus scriptorum in Regno nostro Angl. ad Nos, Coronam & dignitatem nostram specialiter pertinent*: and also they had time out of mind used to prove them before the Masters and Brothers of the Hospital. Here we see the *Testaments*, reckoned as other *Evidences*, the Tryal and Conufance ^{(a) Cod. MS. Hosp. S. Leonardi in Biblio. Cottoniana.} ^{Hensloe's Case apud v. cl. Ed. Cook par. 9. fo. 37, 38, 48.} whereof belongs only to the *Temporal Courts*: and at this day (b) by

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by special Custom many Lords of Mannors have like *Probate* in their
Courts Baron.

That in France Pro-
 bates are in the
 Spiritual Courts.

(c) Choppin. de
 Dom. Francie lib.2.
 pag. 230. Edit. 1588.
 & vide his testam. Le-
 olodi Abbatis Flori-
 ani Helgundi initio.

By the way, for that which *Fairefaxe*, and others following him, tells us, that in all other Countries the *Probate* belongs to Lay-Judges, he is deceived, and deceives his Readers. Indeed, in the most places of other States it belongs to the Lay-Judges: but in France (c) generally the Spiritual Judges, both before *Fairefaxe* his time and since, had this Jurisdiction of *Probate*, and so have had without controversie ever since the disputations about it and other parts of Jurisdiction had with some Clergy-men, by *Coniers* Attorney General to *Philip Valois*, and *Peter Drenx* in behalf of the Duke of *Britain*, at such time as the Clergy had there so extended their Jurisdiction, *Que les Fauxbourgs estoient trois fois plus grands que la ville*, as *Pasquier* speaks of them.

C H A P.

C H A P. VII.

Testimonies of King John and Henry the Third's time, that may serve to prove the Extrinsecal Jurisdiction then in the Temporal Courts.

For the *Extrinsecal Jurisdiction*, as it seems by *Glanvill* and other Testimonies, that it was in the Kings Courts under *H. 2.* and so by all probability before: so out of other Records of following time, somewhat may perhaps be collected to prove, that it continued long in them, as out of the *Patent* of King *John* for *Oliver of Rochford's Testament*, *Sciatis (a) the King* Nos concessisse Testa-
mentum Oliveri de Rupe forti sic ut rationabiliter conditum est, & apud
S. Florentiam veterem & Rupem fortem scriptum & ordinatum. Quare
volumus & firmiter præcipimus quod nullus Executorum Testamenti ipsius
impedit quin illud sicut rationabiliter conditum est faciant. Then out
of that of *Peter de Roche's Bishop of Winchester*, and Chief Justice
of England, touching the Will of *Adam of Gurdun, Rex (b) Dom. P.*
Winton. Episc. Justic. Angl. &c. Mandamus Vobis quod teneri facias Te-
stamentum Ade de Gurdun quod fecit de Rebus suis mobilibus & omnibus
aliis in Angl. secundum dispositionem testamenti excepta terra quam de
domino nostro habuit septimo Augusti. Teste meipso: this expressly gives
some legal execution of a Testament made of personal things unto
the Chief Justice of England. And in (c) 5 *H. 3. Robert of Lexin-*
ton having the possession of all the goods of Philip de Uletott the Te-
stator, a Writ goes out to him to pay William Earl of Salisbury a
debt of Ninety Marks out of them, and that the rest should be deli-
vered to the Executors ad facendum Testamentum; and another Writ
was sent, that he should per visum & Testimonium Execut. sell all
Uletott's goods, & denarios quos inde fieri feceritis, salvo faciatis reponi
sub sigillo vestro & sigillo Executor. predict. donec aliud mandatum no-
nstrum inde habueritis. And in 7 *Hen. 3.* a Writ is directed to the
Sheriff of *Lincoln*, (d) reciting, that whereas it appeared, that *Ri-*
chard Fitz-dune dyed not Intestate, Ideo tibi præcipimus quod omnia part. i. membran. 15.
Catalla ipsius Richardi in Manum nostram capta in balliva tua sine di-
litione habere facias Priori de Noketon, and other Executors of his
Testament ad faciendum inde rationabile testamentum: and other like
Writs occur in the Rolls of King *John* and *H. 3.*

C H A P. VIII.

Suits of Legacies personal in the Spiritual Court from the beginning of Henry the Third, of the beginning of that Course.

But however it may seem by those Testimonies, that the Temporal Courts had some *Extrinsical Jurisdiction* of Testaments in the time of King John and Hen. 3. it is clear, that in the beginning of H. 3. *Suits for Legacies personal* were in the Spiritual Courts, and that it seems from Custome settled in practice of the former times that were then newly past. And perhaps it might be in the more ancient times *fori mixti*, and as well exercised in the one, as in the other Court; as we have elsewhere shewed of the more ancient Jurisdiction of Tithes; or it may be, that those *Writs* in the former Chapter, and the like, were but in case of Tenants being Testators, upon whose deaths all their goods were to be seised by the Sheriff, or other such Officer, and the debt (if any were) paid to the King, *Et residuum relinquebatur Executoribus testamentis defunctorum*, as the words are, both of the Charters of King John and H. 3. (a) and perhaps by that Chapter of the Charter those *Writs* may be interpreted, and *faciat tenui testamentum* may be but only an amoving of the Kings hands from the goods, that so the Executor might perform the Testament; for that the Spiritual Court did from the beginning of H. 3. exercise a Jurisdiction for recovery of Legacies, is infallibly proved by (b) Cales of 2, 4, 6, & 8 Hen. 3. and the Attachments upon Prohibitions extant in Records of that time, are, *quare secutus est*

(a) Cap. 15. magn. Char. quam etiam dominavit Johannes Rex, uti videre est apud Matth. Paris.

(b) 2 H. 3. tit. pro. lib. 13. 4 H. 3. ibidem. 28. 6 H. 3. ibid. 17. 8 H. 3. ibid. 19.

(c) Mich. 16 & 17 and in Matth. Paris. It appears also in 2 H. 3. in the Case of Symon H. 3. Rot. 15 &c. & 18 H. 3. coram W. Fitz-Simon, that even that Suit for deviseable Land being devised, de Raleigh, &c. Rot. was thought to be good in the Spiritual Court *ex Causa testamentaria*, as if *Laicum feodium versus esset in Catallum*, until the devisee had recovered it: and after the recovery, *iterum incipiebat esse Laicum*

(d) Lib. 5. Tract. de feodum — as (d) Bracton fayes, where his Printed Copy is exceedingly corrupted. But it was clear Law in the time of this Bracton, who was a Judge in the Common Pleas in the latter part of H. 3.

(e) Idem fo. 407^b. that *locum (e) non habet probatio in Causa testamentaria si Catalla legentur & inde agatur in foro Ecclesiastico*: and he reckons that of Testaments inter spiritualia, & spiritualibus annexa, which agrees exactly in the

(f) Register. Orig. known and practised Consultations in the (f) Register, *placita de Catallis & debitis, que sunt de Testamento & Matrimonio, ad forum Ecclesie specialiter dignoscimus pertinere, &c.* And although in case of Legacy, as in case of Tithes, the Jurisdiction that gave the recovery of them, was sometimes in the one, sometimes in the other Court, before it was restrained to the Spiritual only, yet it seems by those Cales of Henry the Third's time, which are Testimonies beyond exceptions, that the Spiritual Jurisdiction over Legacies, was long before in practice; otherwise I guess that exception *de Testamento, & de Matrimonio*, had not been so familiar in the Prohibitions of that Age.

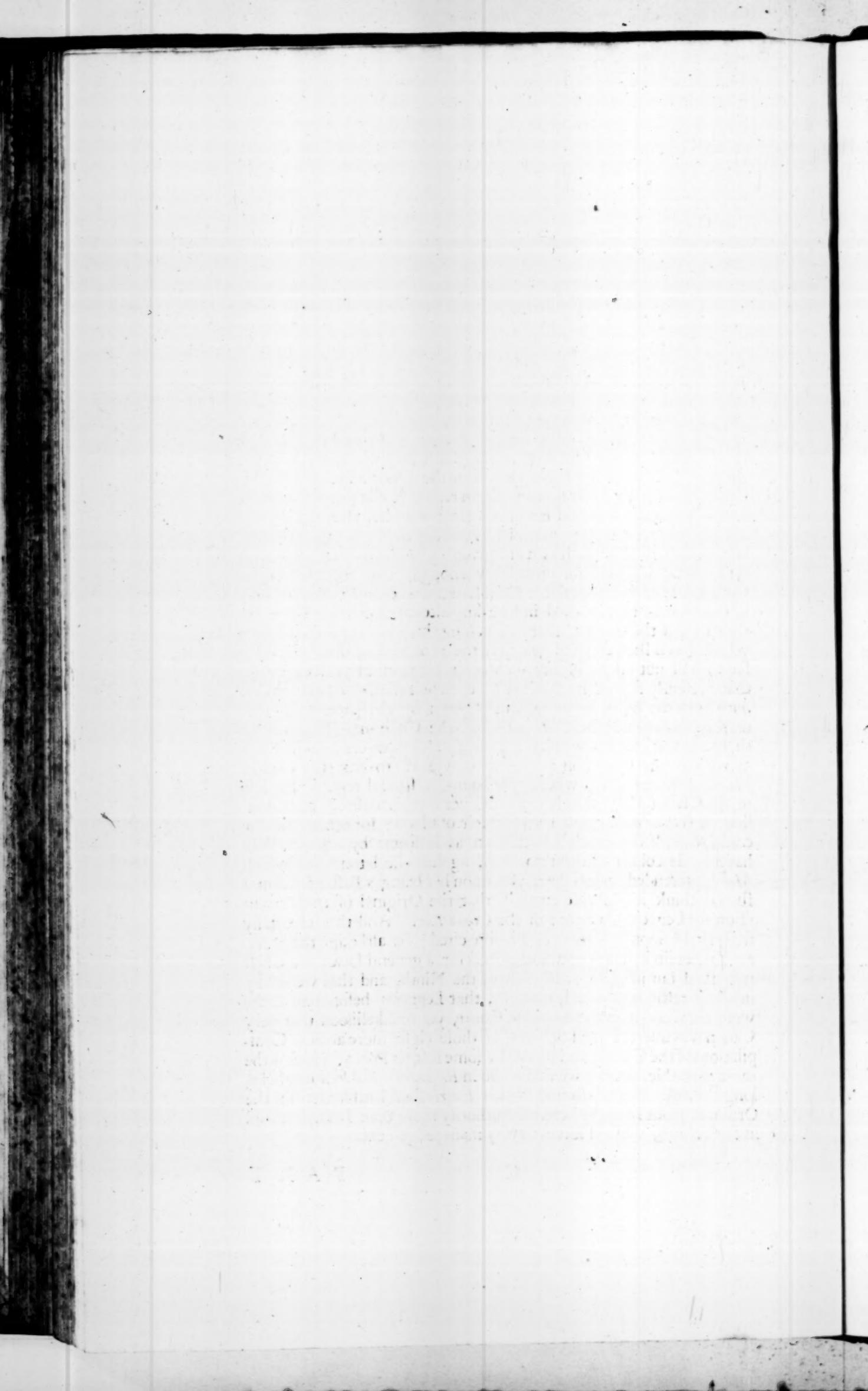
Age. And notwithstanding those Cases out of the Records of King *John's* and *Henry the Third* his time; the Temporal Court not only prohibited not the Spiritual Court, especially in *Henry the Third's* time, but also had not any Consuance of Suits for personal Legacies; for neither have I ever met with any Suit in that kind in the Plea Rolls of *H. 3.* or King *John*, or *Richard 1.* (but very few are extant of the time of the two last) neither doth *Bracton* admit any such thing. And the Author of *Fleta* in the time of *E. 1.* tells us expressly, (g) *de Causa Testamentaria sicut nec de causa Matrimoniali Curia* (g) *Fleta lib. 2.*
Regis se non intromittere. But the beginning of that practice of the Extrinsic Jurisdiction in the Spiritual Court, is even as difficult to find, as that other of Probates. *Linwood* tells us, that (h) *libertas* (h) *Ad tit. de re-
 quoad secundum scilicet, puniendum impedites quo minus test.menta &
 ultime voluntates defunctorum procedant, ortum habet à privilegiis etiam
 in ea parte concessis, & à consuetudine similiter de scientia Regum Angl.
 diutius observata:* and further, *potuit* (faith he) *habere ortum* out of those (i) Laws in the Code that made the Bishop a Protector of Legacies *in pios usus.* It might be also in regard of the purpose of those Laws in themselves; and it were no great wonder, that the Ecclesiastical Court might have gained Jurisdiction over all personal Legacies under colour of such as were given *in pios usus:* But perhaps it will not be admitted for probability enough, that any part of the Code being of the Imperial or Civil Law, was ever so received here in *England*, as that it could induce any alteration touching the Jurisdiction of the Crown, that is, touching this Extrinsic Jurisdiction which (as is shewed) did belong to the Temporal Courts: but who-soever will not admit of any such conjecture, must yet remember, that presently from King *Stephen's* time, when the *Civil Law* was new born into the light, it having lain forgotten by the space of Six Hundred years before in the *Western Empire*, the Code and other parts of that Law were familiarly read by our *English Lawyers*; and I think as well by our Common as Canon Lawyers: to omit that Case of *Mabile of Franchiville*, wherein, it seems, a special regard was had to the Civil (k) Law, that permits not a meer Bastard and Succession *ex Testamento* against a lawful Heir of Blood; for otherwise how could *Richard the Uncle's Institution*, as it seems by a former Will have made colour of right for him, against the latter Will which *Mabile* pretended, unless he relied upon her being a Bastard. But I should think it probable enough, that the Original of this Jurisdiction for Legacies, was out of the *Canon Law.* And that especially from that Canon *Si heredes, &c.* before cited; for although the *Decretals*, wherein it stands now authorized for a general Law, were first published but in *24 H. 3.* by *Gregory the Ninth*, and that we see by infallible testimony already brought, that Legacies before that time, were recoverable in the Spiritual Court, yet by likelihood that very Canon was inserted in all or some of those eight more ancient Compilations of the Canons authorized by some former Popes; (which is the more probable, because we find it also in *Burchard*) and so it might be, long before sufficient ground of this Extrinsic Jurisdiction in the Ordinary; but I sought here for Authority more than I durst be bold in conjectures, which I leave to every mans judgement.

(g) *cap. 57. Sec. Execu-
 tor.*

(h) *stat. c. Statut. verb.
 Ecclesiast. libertat.*

(i) *De Episc. &
 Cler. & nulli 28. &
 quis ad designan-
 dum, 49, &c.*

(k) *Cod. de lib.
 Natur. 1. 2. Matr. &c
 Author. 89, &c.*





PART II.
OF THE
Disposition or Administration
OF
Intestates Goods.

CHAP. I.

In whom it was in the time of the Saxons.

IN the *Saxons* time it was in the Lord of him that dyed (understand the Chief Lord) in case the Intestate were a Tenant, and dyed at home in peace : But in case he were no Tenant, or dyed in his Lords Army, then it was (it seems) as other Inheritance under the Jurisdiction of that Temporal Court within whose Territory the goods were :

This may be proved out of the Laws of that time, which ordain, that upon the death of an Intestate, whom they call *ciale aye*, the Lord (a) is only to have the *Heriots* due to him, which are also appointed by (b) the Laws of the same time, *That by his (b) Ejusdem leg. cap. 58.* (the Lords) advice or judgement his (the Intestates) goods be divided among his Wife and Children and the next of Kin, according as to every one of them of right belongs, that is, according to the nearness of Kindred, if no Children or Nephews from them be ; for it must, I suppose, be understood, that the succession was such, that the Children excluded all their Kindred, and of their Kindred

Of the Disposition or Administration

(c) *De moribus Germanorum.*

dred the next succeeded, according to that in *Tacitus* (c) of his *Germans*, whose Customs were doubtless mixt with our *English* *Saxons*, *hæredes*, sayes he, *successoresque sint eisque liberi, & nullum Testamentum*. But it seems, Christianity afterward brought in the free power of making Testaments amongst them, *Si liberi non sunt, proximus gradus in possessione fratres, patrui, Avunculi.*

But this is exprest only in case the Tenant dyed at home and in
(d) *Canut. legibus cap. 75.* peace ; for if he dyed in his (d) Lords Army, both the Heriott was forgiven , and the Inheritance both of Goods and Lands was to be divided as it ought , which was , it seems , by the Jurisdiction of the *Temporal Courts* within whose Territory the Death or Goods were ; for in that case, it is not said, that the Lords Judgement was to be used , but that the Heirs should divide all ; or, as the

(e) *Leg. Ed. Confess. cap. de heretochiis.*

words in the *Confessor's Law* are, *habeant (e) hæredes ejus pecuniam & terram ejus sine aliqua diminutione, & recte dividant inter se* ; where the right of the Heir both to Lands and Goods is expressly designed, but the Judge that should give it them, not mentioned. Therefore it seems, it remained as other parts of the Common Law, under the

(f) *F. S. Instit. de bonorum possessione.*

Temporal Jurisdiction, as by the (f) Civil Law it is under the Pretors.

ADVICE AND COUNSEL

C H A P.

C H A P. II.

In whom after the Normans until King John's time.

Uⁿtil King John's time it seems the Jurisdiction over *Intestates* Goods, was as of other Inheritance also, in the Temporal Courts: yet no sufficient Testimony is found to prove it expressly; only when the Common Laws of those times speak of *Intestates*, they determine the succession by like division as those of the Saxon times. In Laws attributed to William the First we read, *Si homo morut sans devise, si departent les Infants perite inter se per ovelles*. And afterwards in H. I. (b) Laws, *si quis Baronum vel hominum meorum pre- ventus vel Armis vel infirmitate pecuniam suam nec dederit, nec dare disposuerit, uxor sua, sive liberi, aut Parentes, & legitimi homines sui pro anima ejus eam dividant, sicut eis melius visum fuerit.* Here is the first mention, as I remember, of any thing occurring in our Laws or Histories, of the disposition of the *Intestates* Goods, *pro anima ejus*, which indeed might have been fitly subjected to the view at least of the Church. But no mention as yet being of any Ecclesiastical Power that tends that way, I rather think that heretofore no use or practice was of Administration committed, direction given, or meddling with the Goods by the Ordinaries; but all was by the Friends or Kindred *juxta consilium discretorum virorum*, as the words are in (c) the Statutes made for such as should dye in the *Holy War* with (c) Will. Novoburg. Richard the First. hist. l. 3. c. 22.

Neither doth that of *Glanvill*, which was written under H. 2. tell us of any thing of the Ordinaries Power in this case, although it hath express mention of *Testaments*, and the Churches Jurisdiction of them. Indeed we there find, that if no Executor be named, then (d) possunt (d) *Glanvill. lib. 7. cap. 6.* *propinqui & consanguinei testatoris*, take upon them the Executorship, and sue in the Kings Court against such as hinder the due payment of Legacies; which alio agrees well enough with that before cited out of the Laws of H. I. Neither is there in *Gualter Mapes his Apocalypsis* (being a bitter Satyr against the Abuses of the Spiritual Courts in Henry the Seconds time) nor in *John of Salisbury's Epistles*, that have many particulars of the exercised Jurisdiction of the Church, any thing occurring, that touches upon any Ecclesiastical Powers of this nature.

C H A P. III.

In whom after the time of King John.

BUT in that Charter of Liberties both for the Church and Laity made to the Baronage of *England* in the seventeenth of King *John*

(4) Reperiuntur
teorū similes p[ro]p[ri]o exemplariorū illius diplomatis & penes
Math. Paris, Rogerum
Wendover MS. &
Thom. Rudburne
MS. extant, sed in
Archivis non extant.

(4) in *Reningmead* an express Ordinance is, *That if any Free-man dyed intestate, his Chattels were to be disposed of by the hands of his next of kin, by the view of the Church*, that is, direction and advice being thereto given by the Ordinary, as I understand, saving to all Creditors their debts: the words of it were, *Si aliquis liber homo intestatus deficerit, Catailla sua per manus propinquorum, parentum, & amicorum suorum, per visum Ecclesie distribuantur, salvis unicuique debitis, quae defunctus eis debebat*. That Charter of King *John* is almost the same syllables with the common one that we now use by the name of the *Grand Charter* of 9 *H. 3.* exemplified by the Kings Patent of 28 *E. 1.* But this of Intestates, and two or three other Chapters for the Subjects Liberty, are more in that of King *John's*, than is found in the Exemplification of 28 *E. 1.* However *Matthew Paris* and *Roger of Wendover* when they speak of *H. 3.* granting it, so refer their Readers to this of King *John*, that they tell us, that that of *H. 3.* was the self same in every particular; and therefore omit the repetition of it. And indeed, although in the common Printed *Magna Charta* of *H. 3.* and in the Roll also of 28 *Ed. 1.* in the Tower, where the Exemplification is, this Ordinance touching *Intestates* be wanting, yet in very many of the ancientest Manuscripts of the old Statutes, that of *H. 3.* hath the same words as we have here transcribed it from King *John's*, and that in the same place of his Charter as that in King *John's*; that is, between the eighteenth Chapter, *Si quis tenens, &c.* and the nineteenth, *Nullus Constabularius, &c.* And it is to be understood, that the greatest Prelates of the Clergy of that time, as *Canterbury, London, Winchester, Pandulphus* the Popes *Nuncio*, the Master of the *Temple*, and divers other Bishops were on the Kings part, when that of King *John* was granted. And it is probable enough, that when they saw that a Charter of Liberties must of necessity be granted to the Baronage, they so wrought also, that they might insert this one for the advantage of their Episcopal Government. And they had good colour to think and persuade, that some such thing was fit for them, in regard it was now clearly taken, that some distribution was to be made *pro anima intestati*, the care of souls being the chiefest part of their common pretences for increase of their power and greatness. And hence I suppose, it soon came to pass, that the next of kin had the power of disposition committed by the Ordinaries, and that in Letters or otherwise by vertue of that *per visum Ecclesie*, which was, I think, the textual ground of right of committing of Administration by the Clergy: This of King *John's* being iterated in *Henry the Thirds Charter* (however omitted in the Exemplification) was it seems that provision spoken of in Cardinal *Othobon's Legatins*, *Proinde super bonis ab intestato decedentiam, (b)* so are

v. Manuscriptum
nostr. de Magn. Char-
ta, cap. 16. in fine.

(b) Cap. cum mor-
tis incerta.

are the words, *provisionem que olim à Prelatis Regni Angliae cum approbatione Regis & Baronum dicitur emanasse, firmiter approbantes, strictius inhibemus ne Prelati vel alii quicunque bona intestatorum quo- cunque modo recipient, vel occupent contra provisionem premissam.* What provision is it more likely that this was, than that of the Grand Charter both of King John and H. 3. and the words à Prelatis dicitur emanasse, justifies what we have conjectured of the purpose of the Prelates, when they saw they could not but yield with the King, to an establishment of Laws, by that Charter, made indeed in a Parliament of that age. The same I suppose that which is meant in the (c) Constitution of Arch-bishop Stafford, where it is taken for granted, that the Churches power of disposition of Intestates goods *pro salute anima- rum & in pios usus*, was a thing *consensu Regio & magnatum Regni Angl.* tanquam pro jure Ecclesiasticq; libertate ab olim ordinatum, &c. Where Linwood modestly confesses, that he could not find in what Kings time this Ordinance was made. But *Jobannes de Athona*, upon that of Othobon, though he rightly call that provision, *Provisio Parlamentalis*: yet most ignorantly and ridiculously (d) tells us, that the provision there understood, is the Statute of Westminster, 2. Cap. 21. cum post mor tem, which he makes also to have I know not what reference to the Statute of Gloucester. But this slipt from him either in a dream, or through the utmost neglect of those infallible characters of truth, that the denoting of times affords us, for that *Legatin* of Othobon was made in London in (e) 53 H. 3. and at such time as that Provision was yet extant in the *Magna Charta*, used by our Lawyers. But the Statutes of Westminster the second, and of Gloucester were under E. 1. the one in the sixth, the other in the thirteenth of him; how then could Othobon think of it in his Legatin, or could *John de Athona* have thought so, if he had allowed the Title of his Glofs, which supposes in the point, that the Constitutions of Othobon were published in the year 1248. which had it been in 1268. had agreed with truth; but doubtless the Numeral Letters of MCCLXVIII were transposed into MCCXLVIII. and thence only that Error.

(c) Provinc. Constitut. tit. de immunitate Ecclesiae, C. accedit novitate.

(d) Jo. de Athona ad Leg. at. Othobonum c. cum mortis incertorum.

(e) Prater Annales obvios, Linwood ad C. quia verb. Othoboni, tit. de constitutonibus.

C H A P.

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C H A P. IV.

How that so granted by King John's Charter in Parliament hath continued in practice.

After that Law of the seventeenth of K. John, it seems the *next of kin* disposed of Intestates Goods by the testimony and direction of the Church; for so *per visum* denotes, as we see in *per visum proborum & legalium hominum* in Writs of Summons and the like: but I have not seen any practice of it testified in King John's time. And under H. 3. however it were omitted in his Charter at the Exemplification, the same *visus Ecclesia* continued; so sayes Bracton that then

(a) Bracton. lib. 2. de acq. ter. dom. cap. 26. sect. 2.

lived, and was a Judge of that time, *Si (a) liber homo intestatus & subito deceperit, dominus suis nil intromittat de bonis defuncti, nisi de hoc tantum, quod ad ipsum pertineret,* (sc. quod habeat suum *Hersott.*) *sed ad Ecclesiam & amicos pertinebit executio bonorum.* Yet it seems also, that notwithstanding the right of the Church thus ordained, and the succession of next of kin so included in the Ordinance, both the Lords in some places, according to their former right, still usurp some power over the disposition of Intestates Goods, against the will of the Ordinaries: and on the other side also, the Ordinaries, instead of giving direction for a true disposition of such Goods, get possession of them, and commit them often, or at least too great a part of them, to the use either of themselves, or of the Church, and so defrauded those to whom by the right of natural succession they pertained. For that of the Lords, Bracton his noting it as a thing denied them, compared with what we find among Articles granted in the Synod of London held under Boniface Arch-bishop of Canterbury in 42 H. 3. proves it,

(b) In Annal. Bur-tonensis ecclesiasticis v. cl. Thom. Allen Oxoniensem MS. A. 1257.

Idem quod mortuo (so is the (b) Article) laico sine Testamento non capiantur bona ipsius in manus dominorum. Sed inde solvantur debita ipsius, & residua in usus filiorum suorum, & proximorum indigentium pro salute animae defuncti in pios usus per Ordinarios committantur, nisi quatenus fuerit domino suo obligatus. Here we see by the way plainly that the distribution *in pios usus*, was the devising them among the next of kin, according to their nearness and want; not an employing them to other uses, at the Ordinaries arbitrary disposition. But also that the Ordinary did in this Age sometimes usurp the Goods of Intestates against the next of kin, is enough proved out of that Legatine Constitution of Othobon, *cum mortis incerta, &c.* where it was ordained as you see before; so in the words of it, that they should not dispose of them otherwise than according as that Grant was in the *Grand Charter*; that is, to the benefit of the next of blood: But the Ordinaries had about this time, against the intent of that

(c) Innocent. 4. tit. de Simeonia, c. ad Apostolicum.

Charter, so abused the right of succession, that it was related (c) for a constant truth, that the *Custome in Britania* was, that *tertia pars bonorum decedentium ab intestato in opus Ecclesie & pauperum dispensanda, &c.* as Innocent the Fourth his words are, who lived and wrote in the time of H. 3. What other ground than the Ordinaries ill dealing with the next of blood was for that *tertia pars* I conceive not; unless the Pope had

had some such other Testimony touching it, as we find in an old Manuscript Volume titled (*d*) *Statuta Synodorum* written in an hand of near (*d*) MS. in Thesau-
seven hundred years since, being a Collection out of the Fathers and old ro Correniano c. 21.
Councils, made as it seems by some Britain or Irish-man, as we have de divinitate heredi-
elsewhere conjectured. In that *Statuta Synodorum* occurs Orig. in lib.
de heredibus: pater moriens det tertiam partem filii, & tertiam Ce-
sari, & tertiam Ecclesie; si non habuerit Ecclesiam, det pauperibus, & si
non habuerit Casarem nec Ecclesiam, dividat inter filios & pauperes. But
what Author this is cited out of, I am equally ignorant, as I know not
at all who was the Author of the whole Collection, or whence he
had many other of his Authorities. And other things that Volume
hath out of some old Synod of *Ireland*, which makes to our present
purpose, if the Canons of that Synod had been at all binding in this
State. And it was no such wonder, that some such practice might be
under *H. 3.* for since also in the time of *E. 3.* the Church so usurped
in their Jurisdiction of *Probates*, that they made the Executors wait
on their Officials at uncertain and remote places, and then also put
them, at times, to the Ransom of the fourth or fifth part of the Testa-
tors Goods, before they would give them *Probate*; which was com-
plained (*e*) of in Parliament amongst the Grievances of the Com-
mons.

(*e*) Parl. 21 E. 2.
Cro. Hill. art. 41. &
confuse si vis Parl.
octab. Purif. 22 E. 2.
art. 35. in Archibiz.

Of the Disposition or Administration

C H A P. V.

Of that of bona Intestatorum in manus Domini Regis capi solebant.

(a) Henflocs Case
apud v. cl. Ed. Coke
part 9. sect. 39, 40.

(b) Bracton. lib. 2.
de acq. rerum dom.
cap. 26. sect. 2.

(c) Ita facere te-
stamentum nomine
defuncti sumitur a-
pud Canonici juris
peritos. videlicet Zebu-
lam prax. Episcop.
verb. legatum, &c.

8.
(d) Mos iste repe-
ritur apud Matth. cutes
Paris, histor. major, given them
pag. 982. Ubi de
Pontificia constituti-
one de intestatis
edit. Londinensis.

For that of *bona Intestatorum in manus Domini Regis capi solebant*, for which is cited (b) the Close Roll of 7 H. 3. Rot. 16. it is also most true, if rightly apprehended. All that appears in the Record is, that the King wrote to the Sheriff of Lincoln, that *constat nobis per inquisitionem nobis missam sub sigillo Stephani de Segrave, & aliorum proborum & legalium hominum, quod Richardus filius Dune non obiit intestatus*, and therefore he commands, that the Sheriff should deliver all the Goods of the said *Fitz-dune in manus nostras capta*, to the Prior of Loketon, and others his Executors, *ad faciendum Testamentum*: neither are there any words that tell us of any *capi solebant*, or that these were taken in regard of dying intestate only. Indeed it appears not sufficiently in the Writ, why they were taken; but it is most probable, that the *seizure* was for some debt due to the Crown from the Intestate, which afterward not appearing, or being satisfied, or it appearing that the Executors by the taking upon them the execution of the Testament, would subject themselves to the payment of it, it was fit enough to amove the Kings hands, and deliver all over to the Executors: He that well considers the Statute of *Magna Charta* cap. 18. *Si quis tenens*, and compares it with that of *Bracton*, where he tells us, that the Law was clear, that if *any man dyed indebted to the King*, the Sheriff might (b) *imbreviare, & attachiare cattalla defuncti*, will soon see the probability of this, howsoever the words of the Statute are only of the Kings Tenants: And it concludes also, as if it were only in case of the death of a Testator in regard of *relinquatur executoribus ad faciendum testamentum defuncti*; but plainly, that *ad faciendum, &c.* hath equal reference to the Intestates as to Testators: for no name of an *Administrator* being then usually known, all were called *Executors* that medled with the *Intestates Goods*; and those Executors were *executores qui faciebant Testamentum*, that is, which instead of the Intestate (c) did take such order after his death with his Goods, as they thought he would have done if he had made a Testament; which may be conceived also out of the use remembred in that time, wherein sick men being unable, neither having time to express their meaning, chose out some friends that might be *super (d) hoc expressores & executores*; which friends appointing of Legacies (as if the Intestate had given them) and making disposition of Intestates Goods, were as *Testaments of those Intestates*; and they did truly as *Executors facere Testamentum defuncti*, in which sense it might be spoken of any Executors or Administrators that intermedled in those times. And many Writs occur in the Close Roll of King John and H. 3. that have expressly in them the *amoving of the Kings hands from the Goods of the dead*, when the seizure had been only for the debts to the Crown, according to the Statute of *Magna Charta* (which in substance is the Law at this day) and *Bracton*, by reason whereof, I see not cause enough,

why

why we should understand that of 7 H. 3. to prove any such thing, as a Custom of the Kings disposing or seising of the Intestates Goods, especially in regard that in the passages of the Law, Lawyers and Records of that time, no mention is of any thing that affirms it to be a Custom, or touches it as a common use.

But admit that in *Fitz-dunes* Case it had been so, that the taking of the Goods into the Kings hand, had been because of his dying *Intestate* only. It may therefore be accounted rather as a particular of the irregular practice of that time, than any example to prove a Custom; and whosoever is but acquainted with the course of the Records of King John and Henry the Third his time, must soon see Writs enough that agree not so much as with any settled course of Law, but taste rather of some sudden or arbitrary course of granting them. Indeed some two years before that of *Fitz-dune*, there is an example in *Bedfordshire*, that might seem more fully to prove what is collected out of the other: the Writ is thus, *Rex (e) Vicecom. Bedford salutem. Precepimus tibi quod blada & catalla quae fuerunt Roberti de Insula & Rossie uxoris ejus defuncti, in Washall & Brokeberge arrestari facias & salvo custodiiri, donec discussum fuerit in curia nostra ad quem catalla illa pertinet, & alius inde precepimus*; but this is often enough seconded with other examples that have for the most part a mention of the Defuncts debts to the Crown, that it cannot otherwise be understood, but either as founded upon that Law of seising upon the Goods for debt to the Crown by Prerogative, or as an example (amongst many of other kinds) that discovers a more arbitrary course sometimes in proceeding, than later time hath permitted. And according to one of those wayes (but the first that is upon the Statute of the *Grand Charter* is the fittest and most probable) must that also be interpreted, where (f) H. 3. sends a Writ to the Sheriff of *Rutland* to command him, that (f) Claust. 17 H. 3. notwithstanding that Robert de Weston a *Parisioner* of Weston were memb. 8. drowned, and dyed intestate, he should yet facere Willielmo de S. Lando (that is, to the Parson of the Parish) habere nomine Ecclesie sue id quod ad eum pertinet, habendum de catallis quae fuerunt predicti Roberti, secundum consuetudines partium illarum: that was for the mortuarie, which properly and under that name then was determinable in the Spiritual Court.

But surely we must conclude, that if there were any such practice by the Officers of the Crown in the time of Hen. 3. to seise *Intestates* goods generally, it was not so much the Law of the time; for if so, the Records could not be but as full of examples of it, as the time was of the death of Intestates, which questionless were very many; but some such temporary usurpation, as in 31 H. 3. Pope *Innocent* the Fourth here had for a while executed by his Ministers the *Franciscans* and *Dominicans*, in not only getting into his own hands, but also to his own use, all the *Goods of the Clergy-men* that dyed *Intestate* through *England*, which as *Matthew Paris* that then lived, relates it, *cum audisset dominus Rex, detestans Romana Curiae augmentosam & multiplicem avaritiam, hoc fieri prohibuit, compriens illud ad damnum Regni & suum redundare prejudicium*. Afterward in the time of Edw. 1. it appears by the Statute of *Westm. 2. cap. 21.* *cum post mortem, &c.* that the

(e) *Math. Paris,*
fo. 959. *Edit. Lon-*
dinensis.

Of the Disposition or Administration, &c.

the Goods of *Intestates* did come *ad Ordinarios disponend*; which agrees with that of *Bracton* before cited, and iterated in the same syllables in *Fleta* l. 2. c. 57. *Fleta* (b) which was written under E. 1. And the disposition of Quod videre est *Intestates* Goods was enquired after in those dayes (c) amongt Articles of Ecclesiastical Jurisdiction. And afterwards by the Statute of Cott. sub initio E. 1. 31 E. 3. the Ordinary was compelled to commit the administration of Intestates Goods to the next of kin: after which Statute the name of *Administrator* was common as their Office; and by that name such to whom the Ordinary committed were sued, although before that time they were suable by the name of *Executors*, and perhaps also by (d) Videſis 25 E. 3. the name of *Administrators*: (e) but that name is scarce found (as I to. 54. a. sed & plura in 19. Vir. cl. E. Cook par. 6. fo. 82. ven years after the Statute of 31 E. 3. And in the Parliament Rolls & par. 9. f. 39. & 40. & 19 Ed. 3. tit. Cove. of 17 Ed. 3. the *Administrators* are designed only by the *Cœux que font per l'Evesque ordines en lieu des Executors*, where a Petition is offered (f) by the Commons, that such might have the like Actions as their *Intestates*: but the King answers, *Quant à ceux qui devient intestate le Roy voet que l'Evesque eit action en tien cas depuis que il doit répondre as autres*. But from that of 31 E. 3. saving only the alteration by 21 H. 8. the Law hath continued uniformly to this day.

F I N I S.

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